

United States
Circuit Court of Appeals
For the Ninth Circuit.

ANNIE E. WINSLOW, and ANNIE E. WINS-
LOW, as Administratrix of the Estate of
LORENZO N. WINSLOW, Deceased,
Appellants,

vs.

THE MUTUAL LIFE INSURANCE COMPANY
OF NEW YORK, a corporation,
Appellee.

Transcript of Record

Upon Appeal from the District Court of the United
States for the Northern District of California,
Northern Division.

MAR 1 - 1937

PAUL P. O'BRIEN,

United States
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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APPEARANCES.

Attorneys for Appellants:

H. C. NELSON, Esq.

Eureka, Calif.

Attorneys for Appellee:

F. ELDRED BOLAND, Esq.

KNIGHT, BOLAND & RIORDAN,

San Francisco, Calif.

In the Superior Court of the State of California in
and for the County of Humboldt.

No. 16399.

LORENZO N. WINSLOW and ANNIE E.

WINSLOW,

Plaintiffs,

vs.

THE MUTUAL LIFE INSURANCE COMPANY
OF NEW YORK, a corporation,

Defendant.

ORDER REMOVING CAUSE TO UNITED STATES DISTRICT COURT.

The above-entitled action coming on for hearing upon the petition of The Mutual Life Insurance Company of New York, a corporation, the defendant herein, for an order removing said action to the District Court of the United States, for the Northern District of California, Northern Division, and it appearing to the court that said defendant has

filed its petition for such removal in due form, within the time required by law; that defendant has filed with said petition its bond duly conditioned as required by law, and that the notice required by law of the filing of said petition and bond had, prior to the filing thereof, been served upon plaintiff herein, which notice the court finds was sufficient and in accordance with the requirements of the statutes so provided; and it further appearing that this is a proper cause for removal to the United States District Court, this court does now

ORDER that said petition and bond be and the same are hereby accepted and approved; that this cause be removed to the District Court of the United States, for the Northern District of California, Northern Division, pursuant to sections [1*] 28 and 29 of the Judicial Code of the United States; that all other proceedings in this cause be stayed, and that the Clerk of this Court be and said Clerk is hereby directed to make up, forthwith, the record in said cause for transmission to said United States District Court, in conformance with the statutes so provided.

Dated, July 26th, 1935.

HARRY W. FALK

Judge of the Superior Court
of the State of California,
in and for the County of
Humboldt.

[Endorsed]: Filed July 26, 1935. [2]

*Page numbering appearing at the foot of page of original certified Transcript of Record.

In the United States District Court, Northern District of California, Northern Division.

On Removal #1330S.

LORENZO N. WINSLOW and ANNIE E.
WINSLOW,

Plaintiffs,

vs.

THE MUTUAL LIFE INSURANCE COMPANY
OF NEW YORK, a corporation,
Defendant.

NOTICE OF REMOVAL OF CAUSE AND FILING OF RECORD IN UNITED STATES DISTRICT COURT.

To the Plaintiffs Above Named and to H. C. NELSON, Esq., Their Attorney:

YOU AND EACH OF YOU will please take notice that on the 26th day of July, 1935, by an order of the Superior Court of the State of California in and for the County of Humboldt, the above entitled cause was duly removed from said Court to the District Court of the United States for the Northern District of California, Northern Division, and a certified transcript of the record in said cause was filed in said District Court of the United States [3] on the 1st day of August, 1935.

Dated this 3rd day of August, 1935.

F. ELDRED BOLAND

KNIGHT, BOLAND & RIORDAN

Attorneys for Defendant.

Due service and receipt of a copy of the within Notice of Removal of Cause and Filing of Record in the United States District Court is hereby admitted this 7th day of August, 1935.

H. C. NELSON

Attorneys for Plaintiffs

[Endorsed]: Filed Aug. 9, 1935. [4]

[Title of Court and Cause.]

AMENDED COMPLAINT.

Leave of Court being first had, plaintiffs herein file this their Amended Complaint, and for cause of action allege:

I.

That plaintiff Annie E. Winslow at all times herein mentioned was the mother of Leonard N. Winslow. That Lorenzo N. Winslow was the father of said Leonard N. Winslow, and the said Lorenzo N. Winslow died intestate in the County of Humboldt, State of California, on the 3rd day of July, 1935, and at said time was a resident of the said County of Humboldt; that upon proceedings duly and regularly had in the Superior Court of the State of California, in and for the County of Humboldt, the said Annie E. Winslow was on the 26th day of July, 1935, duly appointed Administratrix of the estate of said Lorenzo N. Winslow, Deceased, and thereafter, and upon the 26th day of July,

1935, qualified as such Administratrix, and ever since said time has been and now is the duly appointed, qualified and acting Administratrix of the [5] estate of said Lorenzo N. Winslow, Deceased.

II.

That the defendant The Mutual Life Insurance Company of New York is and at all times herein mentioned was a corporation duly organized and existing under and by virtue of the laws of the State of New York, and authorized to do a life insurance business in the State of California.

III.

That the said plaintiffs are informed and believe, and upon such information and belief allege that on or about the 14th day of December, 1934, the said defendant at and in the City of Eureka, County of Humboldt, State of California, by and through its agent, Fred J. Moore, who was then and there the duly authorized agent for the said defendant to enter into contracts for life insurance on behalf of said defendant, as hereinafter set forth, in consideration of the sum of \$100.00, then and there paid to said agent for and on account of said defendant, by said Leonard N. Winslow, and the agreement of said insured to pay the balance of said premium, namely: \$153.50, did then and there orally agree to and did then and there insure the life of the said Leonard N. Winslow, for the sum of \$5,000.00, payable to said plaintiffs or their survivor, in equal

shares, as beneficiaries, upon the death of said Leonard N. Winslow, and with double indemnity payable to said plaintiffs as such beneficiaries, in the event of death of said insured, caused by accidental means, and did then and there agree to issue and deliver to said Leonard N. Winslow its written policy of life insurance upon his said life for the said sums above mentioned, payable to said plaintiffs as beneficiaries; that the balance of the premium due to be paid on account of said policy of life insurance when issued, was [6] \$153.50, which said amount said insured did then and there agree to pay, and which said amount said plaintiffs have heretofore tendered to said defendant, but which said amount said defendant has refused to accept.

IV.

That the said Leonard N. Winslow died on the 18th day of December, 1934, in the City of Eureka, County of Humboldt, State of California, as the result of injuries received from violent external and accidental means, occurring after the making of said oral agreement of insurance, as aforesaid; and the sum of \$10,000.00 on account of said contract of life insurance, as aforesaid, then and there became and is now due and owing to plaintiffs from said defendant.

V.

That plaintiffs are informed and believe, and upon such information and belief allege that pursuant to said agreement as aforesaid, a policy has

been issued upon the life of said Leonard N. Winslow, by said defendant company.

VI.

That plaintiffs have demanded of defendant the said policy in accordance with said oral contract, and have demanded the payment of the said sum of \$10,000.00, but the said defendant has refused to deliver such policy to the plaintiffs, and has refused to pay the said sum of \$10,000.00 or any part thereof, and still retains the \$100.00 paid to said defendant by said Leonard N. Winslow.

WHEREFORE, plaintiffs pray judgment as hereinafter set forth. [7]

For a further, separate and second cause of action, said plaintiffs complain of defendant, and for cause of action allege:

I.

Said plaintiffs hereby refer to Paragraphs I and II of the first cause of action herein, and specifically make the same a part hereof.

III.

That said plaintiffs are informed and believe, and upon such information and belief allege that on or about the 14th day of December, 1934, the said defendant The Mutual Life Insurance Company of New York, by and through its agent, Fred J. Moore, who was then and there duly authorized, at and in the City of Eureka, County of Humboldt, State of California, solicited and requested the said Leon-

ard N. Winslow to take out insurance with said defendant in the form of a twenty year endowment policy on the life of said Leonard N. Winslow, in the sum of \$5,000.00, and payable to said plaintiffs herein as beneficiaries, with double indemnity in the event of the death of said Leonard N. Winslow, by reason of external injuries arising from accidental means; that the said defendant by and through its said agent did then and there inform and discuss with said Leonard N. Winslow of the advantages of putting said life insurance into effect immediately and the said Leonard N. Winslow did then and there state and agree with said agent, that said life insurance should and was intended by him to become effective immediately and did then and there offer to pay the quarterly premium that would be due upon the amount of such policy, to make the same effective immediately; that the said defendant by and through its said agent, instead of accepting said quarterly premium, induced and persuaded the said [8] Leonard N. Winslow to pay to said defendant the sum of \$100.00 on account of said premium due on said insurance, which sum was more than the amount of the quarterly premium due on said policy, which said sum said insured did then and there pay to said defendant and said insured did also then and there, and as part of said transaction agree to pay the balance of said premium, namely \$153.50 to said defendant, or its duly authorized agent. That at the time the said Leonard N. Winslow paid the said sum of \$100.00 and agreed

to pay said premium, or the balance thereof to the said defendant as aforesaid, he believed and was reasonably lead, caused, allowed and permitted to believe by said defendant and its agent as aforesaid, that the said insurance would become effective immediately and remain so, as long as the annual premiums stated were paid as agreed upon; and said insured would not have paid said \$100.00 to defendant, nor have agreed to pay said balance of premium had he not then and there believed and understood that said insurance upon his life as aforesaid was effective immediately. That the said defendant and its said agent did then and there represent and state to said Leonard N. Winslow that by paying the premiums annually instead of quarterly, the said insured would save six percent of such annual premium; that the moneys paid to said defendant, towit: the sum of \$100.00 was in excess of the amount of the quarterly premium upon said policy, and it was then and there understood, agreed and believed by and between said Leonard N. Winslow, and the said agent of said defendant that said insurance became and was effective, as of the date and time of making said payment of \$100.00 as aforesaid; that the said defendant by and through *it* said agent, at said time and place produced a form of application upon which were certain questions and spaces [9] for answers of applicant, that said agent did then and there write in the answers made by said Leonard N.

Winslow to such questions, as were then asked said applicant, and did thereupon

That said agent, through inadvertance, neglect or mistake, then and there and thereafter failed to insert in said application blank the fact that the said amount of \$100.00 had been so paid to said agent, and so failed to give the form of receipt referred to in said application blank; but did give said applicant a receipt for said \$100.00, and did advise and cause said applicant to believe that said receipt was in form and sufficient for the purpose of making said life insurance effective from date thereof; that said agent did then and there fail and neglect to have said applicant read or sign the upper half of said application at the place provided therefore, and said agent thereupon sent said applicant to the medical examiner at Eureka, California; that thereupon, and on December 14, 1934, said applicant submitted to a medical examination for life insurance, which said medical examination was favorable to said applicant. That said agent on December 14, 1934, caused said application to be forwarded to the San Francisco office of said defendant, and the said office did return the upper half of said application to said agent at Eureka, California, for applicant's signature; and the said agent thereafter and on December 17, 1934, did request said applicant to sign said upper half of said application at the place indicated by said agent, but without giving said applicant an opportunity to read the same or to observe whether said agent had

correctly, or at all filled in all blank spaces thereon; and said agent had at said time of securing the signature of applicant, through inadvertance, neglect or mistake, failed to insert in said application the amount that had been paid thereon as aforesaid, or that the or [10] any receipt had been given applicant therefor; and said applicant did on December 17, 1934, sign said application as submitted by said agent as aforesaid, without knowing, or being given a reasonable opportunity to know the contents thereof, and did then and there believe and was caused and advised, and led by said agent to believe that said life insurance had become effective from the date of payment of said \$100.00, that said application contained full and correct statements of all facts required therein by said insurance company, and was the second application blank that said agent had previously, and on December 14, 1934, filled in as aforesaid, and that the signing thereof was simply a formal matter; that said applicant, under the guidance, direction and advice of said agent, did on his part, in all respects, comply with and fulfill, according to the advice and instructions so received, the requirements of the provisions in said application form set forth, for the purpose of making said insurance take effect upon the date of signing said application, and as of the age of twenty-three years; that said applicant did not at any time, have any knowledge or information as to said agent's authority to enter into any contracts for life insurance for or on behalf of said defend-

ant, except the statements and representations of said agent with reference thereto, as herein set forth; that said agent did send the \$100.00 so paid to said defendant and said defendant did approve said application and issue a policy of life insurance thereon, dated as of November 20, 1934. That said balance due on said premium and as agreed to be paid by said applicant, namely: \$153.50 was tendered to said defendant on February 11, 1935. [11]

That the said Leonard N. Winslow then and there and for a long time prior thereto knew that said agent had represented and did represent said defendant in said County of Humboldt, in the matter of issuing life insurance coverages and policies and the said Leonard N. Winslow had great trust and confidence in the said Fred J. Moore as said agent in the issuance of said life insurance and the making of contracts with reference thereto.

That the said agent Fred J. Moore then and there had both actual and ostensible authority to make said oral contract of insurance for and on behalf of said defendant, as aforesaid.

That by reason of the premises as aforesaid, said defendant is estopped to claim or assert that said agent then and there acted without or in excess of authority in causing or allowing said Leonard N. Winslow to believe that said insurance was effective immediately. That the said Leonard N. Winslow and the said defendant did then and there enter into an oral contract of insurance as aforesaid, for the principal sums and premiums hereinbefore stated.

IV.

That the said Leonard N. Winslow died on the 18th day of December, 1934, in the City of Eureka, County of Humboldt, State of California, as the result of injuries received from violent external and accidental means, occurring after the making of said oral agreement of insurance, as aforesaid; and the sum of \$10,000.00 on account of said contract of life insurance, as aforesaid, then and there became due and owing to plaintiffs from said defendant. [12]

V.

That plaintiffs are informed and believe, and upon such information and belief allege that a policy of life insurance was issued by said defendant upon the life of said Leonard N. Winslow, in conformity with said oral agreement.

VI.

That plaintiffs have demanded of defendant the said policy in accordance with said oral contract, and have demanded the payment of the said sum of \$10,000.00, but the said defendant has refused to deliver such policy to the plaintiffs, and has refused to pay the said sum of \$10,000.00 or any part thereof, and still retains the \$100.00 paid to said defendant by said Leonard N. Winslow.

WHEREFORE, Plaintiffs pray judgment against said defendant in the sum of Ten Thousand Dollars, together with such other and further relief as

to the Court may seem meet and proper, and also for costs incurred herein.

H. C. NELSON

Attorney for Plaintiffs. [13]

State of California,
County of Humboldt—ss.

ANNIE E. WINSLOW, being duly sworn deposes and says: That she is the plaintiff named in the foregoing Amended Complaint; that she has read said Amended Complaint and knows the contents thereof and that the same is true of her own knowledge, except as to those matters therein stated on information and belief, and as to those matters she believes it to be true.

ANNIE E. WINSLOW

Subscribed and sworn to before me this 18 day of May, 1936.

[Seal]

H. C. NELSON

Notary Public in and for the County of Humboldt,
State of California. [14]

[Title of Court and Cause.]

STIPULATION

It is hereby stipulated between the parties hereto and their respective counsel, that the attached amended complaint may be filed herein, and that the answer of the defendant to the original com-

plaint may be considered as and held to be defendant's answer to said amended complaint.

H. C. NELSON

Attorney for Plaintiffs.

F. ELDRED BOLAND

KNIGHT, BOLAND & RIORDAN

Attorneys for Defendant.

[Endorsed]: Filed May 25, 1936. [15]

[Title of Court and Cause.]

ANSWER

Comes now defendant and answers the first count of plaintiffs' complaint herein as follows:

I.

Defendant denies all the allegations contained in sections three, four, five and six of said first count in said complaint, except as follows:

Defendant alleges that on the 14th day of December, 1934, said Leonard N. Winslow made and signed and delivered to said Fred J. Moore (a solicitor for defendant) a written application for insurance upon his life, in the sum of \$5,000.00, wherein and whereby said Leonard N. Winslow stipulated and agreed as follows: [16]

“This application is made to THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK herein called the Company. All the following statements and answers, and all those

that the Insured makes to the Company's Medical Examiner, as a part of this application, are true, and are offered to the Company as an inducement to issue the proposed policy. (The Insured expressly waives on behalf of himself or herself and of any person who shall have or claim any interest in any policy issued hereunder, all provisions of law forbidding any physician or other person who has attended or examined, or who may hereafter attend or examine the Insured, from disclosing any knowledge or information which he thereby acquired.) The proposed policy shall not take effect unless and until delivered to and received by the Insured, the Beneficiary or by the person who herein agrees to pay the premiums, during the Insured's continuance in good health and unless and until the first premium shall have been paid during the insured's continuance in good health; except in case a conditional receipt shall have been issued as hereinafter provided."

"It is agreed that in the event of the self-destruction of the Insured whether sane or insane during the first year following the date of issue of the policy hereby applied for the Company's liability shall be limited to the amount of the premiums paid. It is agreed that no Agent or other person except the resident, a Vice-President, or a Secretary of the Company has power on behalf of the Com-

pany to bind the Company by making any promises respecting benefits under any policy issued hereunder or accepting any representations or information not contained in this application, or to make, or modify any contract of insurance, or to extend the time for payment of a premium, or to waive any lapse or forfeiture or any of the Company's rights or requirements."

A true and correct copy of said application is hereto annexed, made a part hereof and marked "Exhibit A"; and will be relied upon by defendant upon the trial of the above-entitled action.

Defendant is informed and believes, and upon such information and belief alleges, that said Leonard N. Winslow died on the 18th day of December, 1934, before said application was received by defendant from said Fred J. Moore. The annual premium to be paid by said Leonard N. Winslow, in consideration of the issuance of the policy so applied for, amounted to the [17] sum of \$253.50, and at the time of making said application said Leonard N. Winslow paid to said Fred J. Moore the sum of \$100.00, and no more, and which said sum of \$100.00 was immediately after the death of said Leonard N. Winslow tendered to plaintiffs herein and was rejected by them; and defendant hereby tenders and offers to pay to plaintiffs said sum of \$100.00. No policy of insurance was ever issued by defendant upon said application, nor was said application ever accepted by defendant.

Said Fred J. Moore never at any time had any authority or power, actual or ostensible, to make any contract or agreement of any kind on behalf of defendant, and no conditional receipt was ever executed or delivered by defendant, or by any one for it or on its behalf.

Comes now defendant and answers the second count of plaintiff's complaint herein as follows:

I.

Defendant denies all the allegations contained in sections three, four, five and six of said second count in said complaint, except as follows:

Defendant alleges that on the 14th day of December, 1934, said Leonard N. Winslow made and signed and delivered to said Fred J. Moore (a solicitor for defendant) a written application for insurance upon his life, in the sum of \$5,000.00, wherein and whereby said Leonard N. Winslow stipulated and agreed as follows:

“This application is made to THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK herein called the Company. All the following statements and answers, and all those that the Insured makes to the Company's Medical Examiner, as a part of this application, are true, and are offered to the Company as an inducement [18] to issue the proposed policy. (The Insured expressly waives on behalf of himself or herself and of any person who shall have or claim any interest in any policy issued hereunder, all provisions of law forbidding any

physician or other person who has attended or examined, or who may hereafter attend or examine the Insured, from disclosing any knowledge or information which he thereby acquired.) The proposed policy shall not take effect unless and until delivered to and received by the Insured, the Beneficiary or by the person who herein agrees to pay the premiums, during the Insured's continuance in good health and unless and until the first premium shall have been paid during the insured's continuance in good health; except in case a conditional receipt shall have been issued as hereinafter provided."

"It is agreed that in the event of the self-destruction of the Insured whether sane or insane during the first year following the date of issue of the policy hereby applied for the Company's liability shall be limited to the amount of the premiums paid. It is agreed that no Agent or other person except the President, a Vice-President, or a Secretary of the Company has power on behalf of the Company to bind the Company by making any promises respecting benefits under any policy issued hereunder or accepting any representations or information not contained in this application, or to make, or modify any contract of insurance, or to extend the time for payment of a premium, or to waive any lapse or forfeiture or any of the Company's rights or requirements."

A true and correct copy of said application is hereto annexed, made a part hereof and marked "Exhibit A"; and will be relied upon by defendant upon the trial of the above-entitled action.

Defendant is informed and believes, and upon such information and belief alleges, that said Leonard N. Winslow died on the 18th day of December, 1934, before said application was received by defendant from said Fred J. Moore. The annual premium to be paid by said Leonard N. Winslow, in consideration of the issuance of the policy so applied for, amounted to the sum of \$253.50, and at the time of making said application said Leonard N. Winslow paid to said Fred J. Moore the sum of \$100.00, and no more, and which said sum of \$100.00 was immediately after the death of said Leonard N. Winslow tendered to plaintiffs [19] herein and was rejected by them; and defendant hereby tenders and offers to pay to plaintiffs said sum of \$100.00. No policy of insurance was ever issued by defendant upon said application, nor was said application ever accepted by defendant. Said Fred J. Moore never at any time had any authority or power, actual or ostensible, to make any contract or agreement of any kind on behalf of defendant, and no conditional receipt was ever executed or delivered by defendant, or by any one for it or on its behalf.

WHEREFORE, defendant prays to be hence dismissed with its costs.

F. ELDRED BOLAND

KNIGHT, BOLAND & RIORDAN

Attorneys for Defendant. [20]

United States of America,
Northern District of California,
City and County of San Francisco—ss.

F. Eldred Boland, being first duly sworn says:

That he is the attorney for The Mutual Life Insurance Company of New York, a corporation, defendant in the within action; that there is no officer of said defendant corporation within the City and County of San Francisco, State of California, where affiant has his office, and that for that reason affiant makes this affidavit on its behalf.

That he has read the foregoing answer and knows the contents thereof; that the same is true of his own knowledge except as to those matters stated therein on information or belief, and as to such matters that he believes it to be true.

F. ELDRED BOLAND

Subscribed and sworn to before me this 21st day of August, 1935.

[Seal]

FRANK L. OWEN

Notary Public in and for the City and County of San Francisco, State of California.

[Endorsed]: Filed Aug. 22, 1935. [21]

[Title of Court and Cause.]

VERDICT.

We, the jury in the above entitled case, find in favor of the defendant.

PAUL WILLIAMSON

Foreman

Dated: July 30, 1936.

[Endorsed]: Filed at 10:45 a. m., July 30, 1936.

[22]

In the Northern Division of the United States District Court in and for the Northern District of California.

No. 1330-L

ANNIE E. WINSLOW, and ANNIE E. WINSLOW as Administratrix of the Estate of Lorenzo N. Winslow, deceased,
Plaintiff,

vs.

MUTUAL LIFE INSURANCE COMPANY OF NEW YORK, a corporation,
Defendant.

JUDGMENT

This case having come on regularly for trial on the 29th day of July, 1936, being a day in the April 1936 Term of said Northern Division of said Court, before the Court and a Jury of twelve men duly im-

paneled and sworn to try the issues joined herein, Hans Nelson, Esq., appearing as Attorney for the Plaintiff, and J. Eldred Boland, Esq., appearing as Attorney for the Defendant; the trial having been proceeded with on the 29th and 30th days of July, 1936, in said Term, and evidence, oral and documentary, upon behalf of the respective parties having been introduced and closed and the cause after argument of the Attorneys and the instructions of the Court having been submitted to the Jury, and the Jury having subsequently rendered the following verdict, which was Ordered recorded, to-wit:

“We, the jury in the above entitled case, find in favor of the defendant.

PAUL WILLIAMSON,
Foreman,”

and the Court having Ordered that Judgment be entered in accordance with said verdict;

WHEREFORE, by virtue of law and by reason of the premises aforesaid,

IT IS THEREFORE ORDERED AND ADJUDGED that Judgment be entered herein in favor of the defendant.

ENTERED this 30th day of July, 1936.

WALTER B. MALING,
Clerk.

By F. M. LAMPERT

Deputy Clerk. [23]

PETITION FOR APPEAL.

To the Honorable Judge of the above named Court:

The undersigned, plaintiffs and appellants, conceding themselves aggrieved by the Order of the Court herein, granting the Motion of said defendant for a directed verdict in favor of said defendant, and also by the verdict of the Jury in said cause, in favor of said defendant, and also the Judgment rendered in favor of said defendant in said cause, all made on July 30, 1936, hereby appeal from said Order, Verdict and Judgment, and each of them, and pray that said appeal be allowed, and that Citation be issued as provided by law; that any necessary bond be fixed, and that a transcript of record, proceedings, exhibits and documents upon which said Order, Verdict and Judgment, and each of them, were based, duly authenticated, be sent to the United States Circuit Court of Appeals of the Ninth Circuit, under the laws and rules of said Court in such cases made and provided.

Dated: Eureka, California, September 16, 1936.

H. C. NELSON

Attorney for Appellants. [24]

United States of America
Northern District of California
Northern Division—ss.

ANNIE E. WINSLOW, being first duly sworn, deposes and says: That she is one of the petitioners named in the foregoing Petition; that she has read said Petition for Appeal and knows the contents

thereof; that the same is true of her own knowledge, except as to the matters which are therein stated upon her information or belief, and as to those matters she believes it to be true.

ANNIE E. WINSLOW

Subscribed and sworn to before me this 16th day of September, 1936.

[Seal] H. C. NELSON

Notary Public in and for the County of Humboldt,
State of California.

[Endorsed]: Filed Sept. 25, 1936. [25]

[Title of Court and Cause.]

ASSIGNMENT OF ERRORS

Come now the appellants herein, Annie E. Winslow, and Annie E. Winslow as Administratrix of the Estate of Lorenzo N. Winslow, Deceased, and file the following errors on appeal from the Order of said Court made and entered herein on July 30, 1936, granting the Motion of said defendant for a directed verdict in favor of said defendant; also from the Verdict of the Jury in said cause, returned on said date in favor of said defendant, and also from the Judgment rendered in said cause on said date, in favor of said defendant, which said errors render erroneous the said Order, Verdict, and Judgment, and upon which they rely for a reversal thereof, to-wit:

1. That said Court erred in granting the Motion of said defendant for a directed verdict in favor of said defendant.

2. That said Court erred in directing said Jury in said cause to render a verdict in favor of said defendant.

3. That said Court erred in directing that Judgment be entered upon said directed verdict in favor of said defendant.

Dated: September 16, 1936.

H. C. NELSON

Attorney for Appellants

[Endorsed]: Filed Sept. 25, 1936. [26]

[Title of Court and Cause.]

ORDER ALLOWING APPEAL.

On motion of H. C. Nelson, Esq., attorney for plaintiffs and appellants, above named:

IT IS HEREBY ORDERED that an appeal to the United States Circuit Court of Appeals for the Ninth Circuit, from an Order granting the motion of said defendant for a directed verdict, also from the directed verdict in favor of said defendant in said cause, and also from the Judgment entered upon said directed verdict, all made, rendered and entered on July 30, 1936, be and the same is hereby allowed; and that a transcript, duly authenticated of the records and proceedings upon which said

Order, Verdict and Judgment, and each of them were based, be forthwith transmitted to the United States Circuit Court of Appeal for the Ninth Circuit in the manner and time prescribed by law.

AND IT IS FURTHER ORDERED that the bond for costs on appeal to be given by said appellants be and the same is hereby fixed at the sum of Two Hundred Fifty (\$250.00) Dollars.

Dated: September 25th, 1936.

HAROLD LOUDERBACK

United States District Judge.

[Endorsed]: Filed Sept. 25, 1936. [27]

[Title of Court and Cause.]

BILL OF EXCEPTIONS.

BE IT REMEMBERED, that afterward, to-wit: On the 29th day of July, 1936, at the Courtroom of the United States District Court for the Northern Division of the Northern District of California, in the Federal Building at Eureka, California, the above entitled matter came on regularly for hearing before the Honorable HAROLD LOUDERBACK, Judge of said Court, and before a Jury, duly called, selected, impaneled and sworn; the plaintiffs being represented by H. C. NELSON, Esq., as their attorney, and defendant being represented by KNIGHT, BOLAND & RIORDAN, Esqs., and F. ELDRED BOLAND, Esq., its attorneys; and thereupon the following proceedings were had:

Counsel for plaintiffs moved the Court for permission to have the Clerk strike out on the face of the Amended Complaint the word "oral" appearing on page 8, line 9 in the second cause of action; also the word "oral" on line 16 of the same page [28] and the word "oral" on line 24 of the same page, and the word "oral" on line 5 of page 9, and line 8, page 9.

The COURT: I don't think there will be any objection to that.

Mr. BOLAND: No.

The COURT: Such will be the ruling.

Mr. NELSON: It was admitted in this case if the plaintiff was entitled to recover at all it would be for the face of the policy of \$10,000—\$5000 double indemnity on account of the death of Leonard Winslow, who was killed while riding on a fire truck colliding with another privately operated truck on the streets of this city on the 19th or the 20th day of December, so if there is any liability at all it is double indemnity.

The COURT: Is that conceded?

Mr. BOLAND: Yes.

Thereupon the plaintiffs offered testimony as follows:

Testimony of

FRED J. MOORE

My name is Fred J. Moore. I live in the City of Eureka, and have lived in Eureka for sixteen years. During that entire time I have been with the

(Testimony of Fred J. Moore.)

Mutual Life Insurance Company of New York, as their representative, and still am their representative. My territory covers the Counties of Humboldt and Del Norte. I have a written contract of employment with that Insurance Company, and have been acting under that contract and the contract has been renewed from time to time and amended, due to certain changes of Company policy.

I knew Leonard Winslow very well. I wrote a policy for Leonard on the 10th day of May, 1926. At that time he was fifteen years of age. That policy was in effect up until the time of his death. It was a double indemnity policy for \$2,000 face [29] amount, and the claim paid was something in excess of \$4,000. I also knew his parents very well. I had issued policies of life insurance through my Company to the other male members of the family, that is, the father had a policy previous to my coming with the Company, which matured during my time with them, and I delivered his maturity check; then after writing Leonard a policy I wrote his younger brother Paul a policy. I am also very well acquainted with Mrs. Winslow.

I recall going to see Leonard about additional insurance in the latter part of 1934.

I interviewed him in his office in the City Hall, urging him to increase his insurance as a young man. He had previously sent in a card to our company in answering an advertisement they sent out, showing the benefits to be derived from retirement

(Testimony of Fred J. Moore.)

plan, so I talked to Leonard in his office, and while he agreed with my presentation, he wanted to put it off. Wanted to think about it. I talked long enough to satisfy myself I could do nothing with him at that time, and then later I saw him at his work, down, I would say, at the intersection of Murray Street and Broadway, when he was doing some electrical work there, and his talk was still favorable, but no action. On Friday morning, December 14th, I was going to the court house, and I met Leonard at the intersection of Fourth and I. He was on the opposite side of the street. I stopped him and asked him to come to my car and suggested now was the time to take life insurance, and he replied in effect he was too busy to talk to me. It was during the Christmas holidays, and he was busy doing electrical work with the Christmas decorations, and he had no time. Then I said something to him to the effect that now is all he had—"If you are ever going to take it why put it off?" And he replied in effect [30] he would take a policy with me after the first of that year; he did not have money enough then—he was going to San Francisco, and wanted to have some extra money. I said, "You have money enough to start this. If you go to San Francisco with a large sum of money in your pocket you might spend more than if you didn't take so much with you." So I suggested that he start the thing on that particular day, make a deposit to me,

(Testimony of Fred J. Moore.)

which would leave him with much less after the first of the year, and he would have the knowledge he started his insurance before the first of the year, and it was more valuable to have it than be thinking about getting it. I went to the court house, and before going I had arranged with him to go home for his bank book. He agreed, at my suggestion, to give me a deposit of \$100. He went to the Bank of Eureka during the time I was in the court house, and I was delayed there actually longer than I anticipated, and he was very anxious to get away; but I prevailed on him to go to Dr. E. J. Hill with me for examination. The thing was done so quickly that I wanted Leonard to get back to work as soon as possible, which he was anxious to do, and stating it had taken longer than what I had told him when I first stopped him, and in the rush to get him back to work I had let him go in for his medical examination, and I had failed to have Leonard sign his name to the application concerning my part as agent. Our form is all in one blank. As agent I ask the applicant certain questions, and he takes it to the doctor for completion, and the doctor sends it to our San Francisco office. Our San Francisco office received it the following day—I believe that would be December 15th, on Saturday. On Sunday, December 16th, I received back from San Francisco the upper half of the application, calling my attention that I had [31] inadvertently failed to have the applicant sign the application, and asking that I get his signature,

(Testimony of Fred J. Moore.)

which I did, on Monday, December 17th. I mailed that back to San Francisco on Monday, December 17th, and it reached our office on Tuesday, December 18th, and Leonard Winslow was killed Tuesday night, I think, approximately 7:30. I notified our office Wednesday morning, December 19th, by telegram, to this effect, and our cashier, Mr. Murray, called me immediately concerning the case, and asked what the circumstances were surrounding it. I told him Leonard had paid me \$100 in currency, for which I had given him a receipt for that amount. Sometime after that, in connection with the former policy containing a double indemnity clause, our inspector came here, who works directly under the home office at New York, to satisfy himself as to the liability of the company, and the accidental feature, and at my suggestion I had this inspector go to the bank to verify that he had received \$100. which would correspond with the receipt that Leonard's parents found after his death. Now, Leonard had full confidence in me.

It was on December 14th that I finally came to an understanding with him about the issuance of this policy. At that time I had an application form with me to be filled in, in connection with this application.

The document handed to me is the original document, the exact paper that I had that day.

The writing in black ink that appears upon the face of the application above the name "Leonard Nathan Winslow"; was written by me. In fact, all the writing that appears on the upper half of

(Testimony of Fred J. Moore.)

that application is in my hand-writing, with the exception of Leonard Winslow's signature. I asked him on that day, December 14, 1934, to sign at the place where the signature appears on the [32] upper half. The pasting on the face of the application is due to the fact that his signature was signed after the office returned that form. When I sent the application down, Leonard Nathan Winslow's signature was not on the upper half of it, when I sent it down on December 14th. I was under the impression I had filled it in, but evidently not. I recall now that the office cut the application in half and sent the upper half back to me with the request that *I Leonard* sign the upper half of the application. I saw Leonard after I received this returned upper half for his signature sometime Monday afternoon. I saw him on the street somewhere and I spotted his car, and followed his car until I found him. I just couldn't remember where that was. I told him at that time with respect to having him sign the application that in my rush to get him to the Doctor and back to his work I had neglected to have him sign the application at the time that I made it out. I don't think there was any questions asked on whether or not the answers were the same as the ones written in the day before. I just asked him to sign that and explained I had overlooked having him do it originally, and he signed without question.

Q. Did he read it over or examine it after he signed?

(Testimony of Fred J. Moore.)

Mr. BOLAND: I object to the question as being immaterial and irrelevant.

The COURT: I will allow it.

Mr. BOLAND: Note an exception.

The WITNESS: No, he signed it at my request.

Q. He did not read it the first day in your presence?

A. No.

Q. He left it to you to write down whatever you considered necessary to make the application effective?

A. He did.

Q. I notice on here, Mr. Moore, that there was—on the side of the application it says “Date; Age 23 years.” That is in [33] your handwriting?

A. It is.

Q. Will you explain to the jury what you said about requesting the company to date the policy in that way?

A. Insurance premium dates from the nearest birthday, and the fact Leonard was born on the 2nd day of May, 1911, and writing his application on the 14th day of December, he would be over the six months' period, and closer to 24 than 23, and our company rules permit us to date a policy back six months on request of the applicant. It being a lesser premium for him to pay, I told him that—that was a point I brought out to him, by taking it at this time so close to the 23-year period I could date it back to the age of 23, which would save him a few cents per year.

(Testimony of Fred J. Moore.)

Q. What did you state to him would be the effective date of the policy by dating it back in that way as of 23? To what date would you have to go back where his—

A. (Interrupting) That would be left to the home office. I would make out the request to date it at the age of 23 and they would arrange it to come under the six months' period.

Q. It would be some day prior to November 21, 1934?

A. Yes, in order to get him under the six months.

Q. So the policy that was to be issued was to be issued as of some day prior to November 21, 1934, that is correct, is it?

A. That is right.

Q. There is a provision here—paragraph 14—that appears to be blank on that. There is no space filled in on that application. That is true, is it?

A. That's true.

Q. Did you particularly call paragraph 14 to his attention?

A. No, I did not.

Q. When he paid you this \$100 in cash, had you had discussion [34] as to the method of payment of premiums, Mr. Moore?

A. Leonard asked what the quarterly rate would be, and I told him it would be \$67.20, and we figured that out that it would be higher than an an-

(Testimony of Fred J. Moore.)

nual premium. To start it, he wanted to put it on the quarterly basis. I suggested that he take it annually, that the first year would be the hardest, and after that he could meet, and it is in line with the policy of our company to write as much annual business as possible, which is not only advantageous to the insured, but there is less chance of lapse, and it is less expensive detail to look after.

Q. When he was talking to you about the payment of the policy on a quarterly basis, had you had any discussion prior to that time about making the insurance effective immediately

A. Yes, I told him if the quarterly premium was paid in full, assuming that the medical examination and inspection was satisfactory, his policy would be in force immediately.

The WITNESS: It was his thought that the insurance would go into force immediately.

Mr. NELSON: Q. That is what he led you to believe he wanted?

A. Yes.

Q. Mr. Moore, you gave him a receipt, didn't you, for \$100?

A. I did.

Q. Is that the original, so far as you recall?

A. It is.

Mr. NELSON: We will offer this in evidence as plaintiffs' Exhibit 1, and consider it as read.

The COURT: So received. (The document was marked "Plaintiffs' Exhibit 1.")

(Testimony of Fred J. Moore.)

Mr. NELSON: Q. The \$100 that was paid under that receipt was more than sufficient to pay the quarterly amount that would have [35] been due to make the policy effective immediately had premiums been designated to be paid in that way, isn't that true?

A. Yes.

After I sent the original upper half of the application blank, there was no further discussion between myself and Leonard with reference to changing the effective date or any other provisions. I later forwarded to the Company a statement of the facts in letter form, with reference to this particular transaction.

Mr. NELSON: We will offer in evidence the application blank with the handwriting that appears on the upper half of the first page, and the latter questions of which will be identified in the deposition that was taken.

Mr. BOLAND: I have no objection to it going in. It is merely a matter of convenience. I think the copy is attached to our answer.

The COURT: Then I think we had better accept the whole document.

Mr. NELSON: Yes.

(The document was marked "Plaintiff's Exhibit 2.")

Q. Did you have authority from your company to tell prospective applicants for insurance that policies could be written through you that could be made effective immediately?

(Testimony of Fred J. Moore.)

A. I always tell them providing the premium is paid that it's subject to——

Q. Subsequent approval by the company?

A. Subsequent approval by the home office. I never know if the company will accept them or not until it gets to the home office.

Mr. BOLAND: Is that authority in writing?

A. How is that?

Mr. BOLAND: I would ask, with the Court's permission, if such authority that you have is in writing?

A. In our printed instructions. There are certain things which come into whether or not the company will accept a prospect. It might be health, medical impairment, environment, or occupation. I have had prem- [36] iums paid me in full I thought were all right, but for some reason the company, through their personal inspection, had me return the money and decline to accept the case. So I never know until a policy is issued whether or not it will be accepted.

Mr. NELSON: Q. You are authorized to tell them, subject to the approval of the company, the policy can be made effective as of the date of the application, or even in this instance dating it back a few weeks?

A. Yes.

Q. You have that authority?

A. Yes.

(Testimony of Fred J. Moore.)

Q. And you have written policies on that basis?

A. Yes.

Q. Taken applications on that basis?

A. Yes, sir.

Q. Did Leonard Winslow, as far as you know, give you any untruthful answers to any questions that you sought to write the answers to?

A. He did not.

Q. So far as Leonard Winslow was concerned, was there anything more that you suggested or stated would have to be done by him to make the policy effective immediately that he refused to do or would not do, upon request by you?

A. Well, he complied with all my requests.

Mr. NELSON: So far as he was concerned, he did everything he knew of that was necessary to make this policy effective as of the date set in the application to give him an age of 23 years?

A. He did.

Q. Did Leonard Winslow have any information from you as to the type of receipts that were issued by agents of this company?

Mr. BOLAND: I object.

The WITNESS: No.

Mr. BOLAND: I move to strike out the answer. I object as being incompetent and immaterial. [37]

The COURT: I will allow it to stand.

Mr. BOLAND: I will note an exception, if the Court please, because it contradicts Section 14 of the application.

(Testimony of Fred J. Moore.)

Mr. NELSON: Q. Did you hand to Lorenzo Winslow for his inspection or reading any documents that might contain rules and regulations of your company with reference to issuance of policies?

A. No.

Q. So then is it true, if I might be permitted to summarize the evidence—you simply had this application blank there, you filled it in, and on the return from San Francisco, had him sign it, without his ever having read the upper part of it, as far as you know?

Mr. BOLAND: I again renew the objection. It is immaterial whether he read it, or not, because, under the law of California, and the Federal Court decisions, he is presumed to have read it. The United States Supreme Court has so said.

Mr. NELSON: We are offering it to show the reasons why he did not read it.

A. Yes.

Mr. BOLAND: I note an exception.

Mr. NELSON: The balance on this premium as indicated on the receipt, was some \$153. was it not?

A. And Fifty cents.

Q. How was that to be paid?

A. Within sixty days.

Q. He agreed to do that, did he?

A. He did.

Q. Was the offer of payment made to you afterwards?

(Testimony of Fred J. Moore.)

A. It was. After his death. It was.

Q. You did not accept it?

A. I did not.

Q. Under instructions from your company, is that right?

A. Well, I had no instructions from the company, but I thought the case was out of my hands and I suggested it be sent to our home office direct.

[38]

Mr. NELSON: Q. That offer was made, you recall, do you not, within the 60-day period?

A. I am under the impression it was. I don't remember the exact date, but I assume it was.

The COURT: In other words, to the best of your recollection it was?

The WITNESS: Yes.

Mr. NELSON: On February 11, 1935, I offered you the \$153.50 and then in view of your refusal it was deposited with the Bank of Eureka to the credit of the Mutual Life Insurance Company of New York, after the company had written its refusal to accept the money.

Mr. BOLAND: I admit that the offer was made, Mr. Nelson, and I assume that the deposit was made, although we never checked on it.

Cross-Examination.

Mr. BOLAND: Q. You have your instruction book, have you?

A. Yes.

Q. May I glance at it, please?

(Testimony of Fred J. Moore.)

(Witness hands book to Mr. Boland.)

Q. This instruction book, Mr. Moore, was in your possession and under it you acted at the time of the application in question?

A. Yes, sir.

Mr. BOLAND: Q. I think I understood you, Mr. Moore, to say that these conversations you had with Mr. Winslow were all prior to the signing of the application. On what date was it—the time he put his signature to the application?

A. I wrote the application on December 14th, but the part that was returned for his signature was signed by him, I would say, on December 17th. If that would be correct, it would be December 17th. That is correct, because Tuesday was the 18th—the day he was killed.

Q. Did you have any conversation with Winslow between the 14th and the time he put his signature on the application, on the 17th or 18th?

A. I did not. [39]

Q. All the conversation you had with him, then, was the date that you wrote in the figures on the application—that is, December 14th—it was all prior to that time?

A. Yes.

Q. You were instructed to return the \$100 back to Mr. and Mrs. Winslow, were you not?

A. Yes.

Q. Did you do so?

A. Yes.

(Testimony of Fred J. Moore.)

Q. Upon what date?

A. I think it was the 26th day of December. I can tell you exact. (Witness refers to papers) December 26, 1934.

Testimony of

ANNIE E. WINSLOW
For Plaintiff.

My name is Annie E. Winslow, and am the plaintiff in this case. I am the surviving widow of Lorenzo N. Winslow, who died July 3, 1935. He and I were the parents of Leonard Nathan Winslow. I recall of making a deposit at the Bank of Eureka to the credit of the Mutual Life Insurance Company of New York, in the sum of \$153.50; it is still there to the credit of the Company. Such deposit was made within the sixty day period after Leonard was killed. The \$100. was tendered back to me after Leonard's death, but I did not accept it.

[40]

Testimony of

GERALD W. MURRAY

on behalf of plaintiff, by deposition.

My name is Gerald W. Murray; I reside at 266 Dolores Street, San Francisco, and am connected with the defendant, The Mutual Life Insurance Company of New York, in the capacity of Agency Cashier. The territory over which my agency

(Testimony of Gerald W. Murray.)

cashier work extends is Northern California and the State of Nevada.

I know William L. Hathaway, who is the Manager of the San Francisco Agency of The Mutual Life Insurance Company of New York. His agency covers the territory of Northern California and the State of Nevada, which includes the County of Humboldt, State of California.

I have been the San Francisco cashier for five years last past, and Mr. Hathaway has been the district manager for that entire time and longer.

I know Fred J. Moore of Eureka, California, and have known him about fifteen years. During that time he has been connected with or a representative of the defendant Company in the capacity of Agent. His agency covers the territory generally of Mendocino, Humboldt and Del Norte Counties in this State.

I am the agency cashier in the San Francisco Agency over which Mr. Hathaway is manager. I am an employee of the Mutual Life Insurance Company of New York, appointed by the New York office, and am not an employee of Mr. Hathaway's. During the fifteen years that I spoke of Mr. Moore having been the agent of this company, I have also been in the employ of the defendant Company, resident here in San Francisco. During the fifteen years which I have known Mr. Moore he has been acting as agent for the defendant Company in the three counties above mentioned.

(Testimony of Gerald W. Murray.)

I have the company files, or records, with me with reference to the matter of the claim of the plaintiffs arising out of the [41] application of Leonard N. Winslow, upon which this case is based. Leonard Nathan Winslow was a policy holder in the defendant company before December 4, 1934. He had a twenty year endowment policy in the amount of \$2,000 which was issued on June 10 of 1926, and was payable to the insured if living at maturity; in case of prior death, to his parents Annie E. and L. N. Winslow, or the survivor of them. That policy was issued through the San Francisco agency and the application was written by Fred J. Moore of Eureka, California, the same person who is now and was on December 4, 1934 our resident agent.

The records of the company show that we received in San Francisco on December 15, 1934, the application, incomplete, for another policy on the life of Leonard Nathan Winslow. It was received from Doctor E. J. Hill, who made the examination at Eureka, California. We did not receive any communication from our agent, Fred J. Moore, at that time. The application was dated in Eureka on December 14th. That is, the doctor's examination was dated December 14th.

We communicated with Fred Moore with reference to the incomplete form of the application on the same day the application was received in the office. On December 15th the upper half of the application was returned to the agent, Fred J. Moore,

(Testimony of Gerald W. Murray.)

with a letter from the office which read as follows: "Kindly note that before the above mentioned application can be forwarded to the Home Office, it will have to be signed by the Insured. When completed kindly return to this office, where it will receive our immediate attention." I don't believe there was any telephone conversation with Moore about the form of the application at that time because of the fact that the letter which was written with it would indicate that the transaction was handled by mail. The upper half was returned to our San Francisco office on [42] December 18, 1934. It was in the same form which had been returned to him, and the only change—the only addition was that the application was then signed by the applicant. I have no notation as to the time it was received on December 18th.

The application was then forwarded to the Home office in New York on the same day. There was a memorandum attached to the application initialed by Fred J. Moore stating "Sorry my carelessness delayed this 'app' going to H. O.". Our office did not send any statement in with that application to the New York office. At the time the application was forwarded to the Home office there is an entry or an office communication that goes along with it that lists the number of the policy and the amount of insurance the applicant may then have in force in our company. Our San Francisco office accepts all of the applications, that is, physically as far as

(Testimony of Gerald W. Murray.)

the application is concerned. They don't act upon them though, nor do they submit any recommendations. We don't make any notation on the face of the application, or attach to it, with reference to the desirability or undesirability of taking the application and executing a policy on it.

Policies are issued at the Home office, but they are relayed from our office after they have been approved in New York. They are not executed in San Francisco. There is no one authorized here (San Francisco) to issue a policy. Mr. Hathaway has no authority to issue a policy; only to pay a policy—that is, to pay a policy claim. Policy claims are paid out of our San Francisco office by checks in a good many cases; but that is all done in each instance by special authority that is granted in that particular case. That is, the claim is approved in New York, and to hasten the payment of the money to whom it may belong, why, the company will wire out and state that such and such a claim has been approved, and that we may issue a draft to [43] the proper people for the amount due.

The San Francisco office forwarded, on December 18th, this application of Leonard Nathan Winslow to our Home office at New York without any further comment than I have already indicated. On December 20th a letter was received from Fred J. Moore of Eureka, the agent in this case, as follows: "Please send proof of death form for above party who was accidentally killed last eve-

(Testimony of Gerald W. Murray.)

ning as per newspaper clipping herewith. Also the above party applied for a \$5000.00 20-year endowment Dec. 14, 1934. Applicant paid me \$100.00, and had agreed to pay balance of premium within 60 days." That was signed "Fred J. Moore" and the case he was referring to was the Leonard Nathan Winslow case. Later the \$100. was forwarded to our company. I have not the date here that the money was received. This date of December 20th was the first intimation that we had had that the \$100 had been paid. The \$100 was sent to us by Fred J. Moore. There was no statement from Moore as to what form the promise or obligation to pay the balance of the premium was evidenced by. I have only his statement of December 20th, that has been referred to; he said the applicant had paid \$100, and had agreed to pay the balance within sixty days. The premium that would have been due on this particular policy and application if issued, would be \$253.50 on the basis of the annual payment of premiums. On the same application and policy the amount of quarterly premium due if the policy had been issued on that basis, would be 26½ per cent of the annual premium. By taking an annual premium rather than a quarterly premium, basis of payment, the policy holder would save at least six per cent per year. The quarterly premium payment that would have become due had the policy been issued on that basis would have been \$67.18.

In response to your question as to whether the

(Testimony of Gerald W. Murray.)

company authorizes its agents, such as Mr. Moore, to accept promissory [44] notes as part payment of premium, I will state that that is covered in the Instructions to the agent: In the Rate Book there is listed "Rules, Regulations and Instructions for Agents," and under the heading "Premiums Paid with Applications" the following instructions are given. Shall I read that instruction?

Q. Well, you may read that, and I will ask you some further questions about it.

A. "The Company will not recognize initial premiums paid in advance of delivery of policies unless the full premium is paid in cash, a conditional receipt is issued, and the full premium is forwarded to the agency. When the full cash premium is paid at the time application is made, the amount must be entered in the portion of the application beginning '\$.....' " that is the dollar sign, " 'in cash has been paid to the Soliciting Agent,' and the number of the conditional receipt noted in the proper space. Agents may accept initial premiums between the time application is made and policy is delivered provided that a conditional receipt is duly issued and further provided that the applicant has continued in good health and all other conditions, including applicant's occupation, have remained unchanged. The full amount of the premium and a statement covering details of payment should be sent immediately to the agency. Any

(Testimony of Gerald W. Murray.)

representative who fails to comply with this rule will be liable to immediate dismissal.”

Q. Notwithstanding that written instruction, is it not a fact that your agents have, with the knowledge of the company, accepted promissory notes as payment in whole or in part of premiums under policies?

A. No.

Q. Or is that limited to your own particular knowledge and experience?

A. There is a difference there on a note; if the policy is issued the agent is permitted to deliver on a note settlement—if a policy has been issued and has been placed in the agent’s hands [45] for delivery.

Q. Then you mean he can take part cash and part note?

A. He can deliver the policy then on that basis, yes.

Q. And that is considered payment of that first premium?

A. Yes, it is.

Q. Is it not customary for life insurance companies generally in Northern California to allow their agents to accept promissory notes made out in favor of the agent personally, as part or full payment, as the case may be, of premiums due on the policy applied for, and the company holds the agent personally responsible for the amount thereof?

(Testimony of Gerald W. Murray.)

A. As stated in the first instruction there is only one way that the company protects an applicant from the time the policy is written, that is provided that he pay in full the premium and a conditional receipt is issued at that time. That is the only transaction that the company recognizes as putting the policy effective as of that date—provided that he passes the other requirements.

Q. Speaking now, Mr. Murray, about the general practice of life insurance companies in this area, as far as you know, irrespective of written instructions contained in manuals or otherwise, of issuing policies when they know that their agent has first accepted the personal obligation of the applicant, and that they, the insurance company, charge back against and hold the agent personally responsible for the premium due. Don't you know that to be the practice of life insurance companies?

A. No. The question is—it is true with our company, after a policy has been issued and placed in the agent's hands for delivery, but prior to that time, no, they don't permit anything to put that policy in force except the payment of the full premium in cash and a conditional receipt to be issued at that time. After the application has been acted upon and the policy comes out and [46] is placed in the agent's hands for delivery, he may then deliver that policy to an applicant and take a note for the entire premium if he wishes to. In that case the company requires that the note be registered in

(Testimony of Gerald W. Murray.)

their office and if the policy holder does not pay the note, let us say, why, we look to the agent for the net premium on that contract; that is charged up to him.

Q. Are those notes made out to the agent or the company?

A. Those notes are always made out to the agent as an individual.

Q. That is, you allow the agent to deduct what commission would be due him for writing the policy, that is for securing the application, and you charge him for the balance?

A. Yes.

Q. In this particular instance was the agent's commission more or less than \$100?

A. In this particular case the agent's commission on the annual premium would have been more than \$100.

Q. Have you any objection to stating what percentage he would get of the first premium due?

A. I have not his contract here. On a 20 year endowment it would be 45 percent first year commission on that.

Q. And if issued on a quarterly basis, what would be the agent's premium?

A. The same.

Q. Have you figured on an annual basis?

A. Figured annually and quarterly.

Q. I mean, he would get 45 percent of the annual amount paid?

(Testimony of Gerald W. Murray.)

A. If the policy was payable quarterly he would get 45 percent of each quarter.

Q. For the first year?

A. For the first year, yes.

Q. Now with respect to this particular policy or application, was there a double indemnity feature in case of accidental death?

A. Yes, sir.

Mr. NELSON: Q. Now, Mr. Murray, your company does authorize its agents, such as Mr. Moore, to inform the applicant that [47] he has authority, at least under some conditions, to make a policy effective immediately?

The WITNESS: A. Yes—well, he has the authority to tell the applicant that the policy can be made effective immediately, providing that the full premium is paid and a conditional receipt is issued; and then it is effective in accordance with the agreement that the applicant signs and the conditional receipt that is issued. That conditional receipt is signed by the agent who collects the full premium, and it is also signed by the applicant.

Q. Do you know that your agents do tell prospective insured's as a part of their statement to the insured that "this policy can be made effective immediately?"

A. Yes, they can tell them that.

Q. And there are instances where the insured himself has desired that particular form of policy?

A. Yes, sir.

(Testimony of Gerald W. Murray.)

Q. Is that not true?

A. Yes, sir.

Q. So that you then leave it to your agent to accept the premium and issue the receipt?

A. Yes, sir.

Q. In this particular instance sufficient premium has been paid, if computed on a quarterly basis, to have made the policy effective immediately, had it not?

A. Yes, if the application were written to call for premiums on quarterly basis and a conditional receipt was issued, the \$100 would have been more than enough to have paid the quarterly premium.

Mr. Moore, as our resident agent, had a right to the receipts. As to whether he may have had any—he may have lost them. There is no way for me to state if he had a receipt book. I know that Mr. Moore has been furnished with such a book in the past; I don't know whether he had one on that particular day.

We have never received any applications to which any memorandum might be attached, requesting the policy be made effective [48] immediately. The only thing that would indicate that would be where the application shows the binding receipt number and the check comes in for the gross premium, and then that would be a case such as you describe, where the applicant wanted the insurance to become effective immediately. The receipt is issued to the insured and our office does not see it.

(Testimony of Gerald W. Murray.)

We act upon the face of the application with respect to the information that is set forth in Paragraph fourteen. We have received applications wherein request was made by the applicant to have the policy effective immediately through Mr. Moore's agency, as indicated by binding receipt having been issued; that would be the only way we would know. We have no evidence of the issuance of the receipt other than what might be stated in Paragraph 14 only that the check comes in with the application in such cases.

We have the check for the premium, and we have the statement in answer to question fourteen, that so much was collected and the binding receipt, certain number and certain date, was issued. I don't mean a check after allowing the agent's commission; in a binding receipt case it is necessary for the gross premium to be sent in with the application. Then if the applicant is declined a check for the full amount is drawn to the order of the applicant and returned. In the event it is accepted, the agent's commission is then paid by check from the office to the agent. We don't require any report from the agent himself as to whether or not he has issued what I refer to as a "conditional receipt". We rely upon the application alone.

In the case where the applicant has paid either by note or by cash, the premium due, we allow the agent sixty days from the date of the examination to remit to the company. He is then supposed to

(Testimony of Gerald W. Murray.)

have made a settlement with the company. The company [49] allows him sixty in which to remit the premium to the office in the event he has not collected it sooner. At the time he collects, the company requires an agent to forward that money to the company immediately. That sixty day rule would apply in a case where a man has gotten a policy free for delivery and he has delivered it to the insured on a note settlement and has reported the note settlement to the company, and then at the end of sixty days the agent has still been unable to collect the premium from the insured; in that case the company then demands that the agent himself advance the money to pay that net premium on the sixtieth day. But, if he should collect on the note prior to the expiration of the sixty days, the company expects him to remit that to the company immediately. But we leave that to the agent. We make no independent investigation against the agent to determine whether or not he has been paid; those are his rules and that is what he is required to do. If the check is missed, we first check against him when the sixty day period has run.

After forwarding the application to our home office in New York, we received word from Mr. Moore on the 20th of December advising of the death of the applicant, and enclosing a clipping showing he had been killed in some automobile collision. Upon receipt of that information, we wired the Home Office that Leonard N. Winslow had been reported killed

(Testimony of Gerald W. Murray.)

in an accident. The wire was sent on December 20th. The application was received in New York on December 20th P. M. It was sent air mail to the New York office. The figures "2529" on the reverse side of the original application is our agency number of that application.

Q. On the face of the application, in the upper right-hand corner, there is a space printed "For H. O. use," and then apparently filled in by some sort of machine "December 6614." What does that indicate?

A. The "H. O." refers to the home office [50] use, and I don't know what that number represents. That is the Home Office filing number.

Q. Stamped on by your New York office?

A. Yes, sir.

Q. On the back of it appears "Date of issue Dec. 21, 1934." What does that mean?

A. You say "Date" of what?

Q. "Issue, December 21, 1934." Is that a Home Office record?

A. That is a Home Office record, yes, sir.

Q. Does that refer to the issuance of the policy?

A. I don't know.

Q. What would that indicate to you as the Pacific Coast Cashier?

A. It does not indicate anything to me.

Q. Is it not your rule, they put on the date of the issuance of the policy on the application, or any similar application that might be received?

(Testimony of Gerald W. Murray.)

A. I am not familiar with the detail. That is, the application states "Date of issue" in one column under the heading of "Number" and above that there are two dates, one date of November 20, 1934, the other December 21, 1934.

Q. Is it your testimony you don't know what that means?

A. I don't know whether that means whether the policy was issued on that date or not.

Mr. NELSON: Q. This application also has endorsed on it, in the line above the date of issue December 21, 1934, the date November 20, 1934, amount \$5,000. You noticed that on there, Mr. Murray?

The WITNESS: A. Yes, I did.

Q. Is it not true that by taking that date as the date of the application by the insured, that it would become the basis of a premium payment computation for the insured as of an age of twenty-three years instead of twenty-four years had he computed the time as of the date of the physical examination by Doctor Hill?

A. Yes, I see on the front side of the application a [51] memorandum stating "Date policy age 23 years," and in that case the company would date the policy back to the last date that he could still pay the rate as of age twenty-three, and in this case that date would have been November 20, 1934.

Q. So you accepted Mr. Moore's request there to date the policy back to allow him to compute the

(Testimony of Gerald W. Murray.)

premiums based on the age of twenty-three, as when under your ordinary rules he should have paid on basis of twenty-four; that is true, is it not?

A. That is true. The Home Office record would indicate that they have taken note of the request on that.

Q. Now on the back of this application you also have a notation "Premium" three series of figures, "244.45, 4.05 and 5" with a total of 253.50. That was the same amount that you had previously computed as the premium due?

A. Yes.

Q. On a basis of a twenty-three year age?

A. Yes, sir.

Q. It says "How paid". I find certain letters there, and figures. Would you read them?

A. Yes. Under the column "Premium" it has the figure of 244.45. Immediately below that there is an item of 4.05, and off to one side a memorandum on a stamp, stating "January '32 Waiver of premium, 20 years." And then in the first column again appears the item of \$5, showing double indemnity for twenty years. There is a total then of the first column showing \$253.50, and off to the right is a symbol "A" in the column of "How paid" which indicates an annual premium.

Q. How do you explain that first item "January '32?"

A. January '32, waiver of premium—"W. P." is the initial for Waiver of Premium benefit.

(Testimony of Gerald W. Murray.)

Q. Twenty years?

A. Yes, sir.

Q. Why was that dated January '32?

A. That simply refers to the type of waiver of premium benefit. There was a change made in '32 which still was in effect at the time this application was made. [52]

Q. This refers, does it not, to the action that the company's Home Office was going to take on this particular application?

A. Yes.

Q. Not to any other application or policy?

A. No.

Q. Now you see there is an initial "A"?

A. Yes.

Q. That is in lead pencil?

A. No, I am referring to the printed.

Q. I see, "How paid" annual premium. What does the penciled "A" indicate?

A. I would say those are simply the initials of the clerks whose hands the application has passed through, and the same with the other one.

Q. It is a particular method, that is, the use of pencil as distinguished from pen or color?

A. I don't think it makes—

Q. Indicating any department, or do you know?

A. I don't know; no.

Q. Next is a red "B"—is that right, Mr. Bolland, "B"?

A. Yes.

(Testimony of Gerald W. Murray.)

Q. What does that indicate?

A. Just another clerk's initials on that application, whose hands it has passed through.

Q. Down in the left-hand corner there are some words and spaces and letters that have been added, apparently. You see the word "Backer?"

A. Yes, sir.

Q. And in black ink "M. E." or "M. R."?

A. "M. E." I would say.

Q. What does that indicate?

A. That would indicate the initials of the clerk who attended to the back part of the application, I would say.

Q. To what part?

A. To the back. It says "Backer"; I don't know what its meanings are.

Q. He would look at the whole application, wouldn't he, not just the back?

A. It passes through a good many hands.

Q. You don't know which. The first check, this black pencilled "A"—do you know what that means?

A. No.

Q. The second check is red pencil "B"; do you know what that [53] means?

A. No.

Q. Over to the right "For Medical Dept.", third column, "With W. P. and D. I"?

A. Yes.

(Testimony of Gerald W. Murray.)

Q. Do you see those letters?

A. Yes, sir.

Q. And then just read what you see after that written on the original in green ink?

A. The photograph is rather hard to read. Well, it is someone's name with the date of December 20, 1934 written after it.

Q. 20 or 30?

A. It looks like 20 to me.

Q. There is a pin hole right through there. Does your photographic copy show?

A. It seems to be clearer on this. Here is another picture of it; that seems to be fairly clear on that one.

Q. Apparently that was approved by the Medical Department of your Home Office as of that date?

A. Yes, sir.

The face of the application was referred to in the deposition as plaintiffs' Exhibit No. 1, and the back of the application as plaintiff's Exhibit No. 2 attached to the deposition.

Cross-Examination.

The San Francisco Agency office has no authority to accept applications other than to forward them as received to the Home Office for action there; it has no authority to accept and issue a policy upon any application.

Testimony of

FRED J. MOORE

for defendant.

Mr. BOLAND: Q. This morning, or today, we read a rule, No. 77. Just so we get them in chronological order, will you read it again? Will you please read Rule 77?

A. (Reading) "PREMIUMS PAID WITH APPLICATIONS.

"The company will not recognize initial premiums paid in advance of delivery of policies unless the full premium is paid in cash, a conditional receipt is issued, and the full premium is forwarded to the Agency. When the full cash premium is paid at [54] the time application is made, the amount must be entered in the portion of the application beginning 'Dollars, in cash has been paid to the Soliciting Agent,' and the number of the conditional receipt noted in the proper space. Agents may accept initial premiums between the time application is made and the policy is delivered, provided that a conditional receipt is duly issued and further provided that the applicant has continued in good health and all other conditions, including applicant's application, having remained unchanged. The full amount of the premium and a statement covering details of payment should be sent immediately to the Agency. Any representative who fails to comply with this rule will be liable to immediate dismissal. See paragraph 78, 157/158."

(Testimony of Fred J. Moore.)

Q. Now, referring to plaintiffs' Exhibit 2, being the application identified this morning, I call your attention to the 14th provision. Will you read that to the jury, please?

A. (Reading) "Dollars in cash has been paid to the Soliciting Agent, and a conditional receipt No., dated, signed by the Secretary of the Company and countersigned by the Agent, has been issued, making the insurance in force from such date, provided this application shall be approved."

Q. You did not receive the full first premium, did you?

A. No, I did not.

Q. You did not fill in this clause 14?

A. No, for that reason.

Q. No?

A. Excuse me.

Q. You did not issue a conditional receipt?

A. Not in the form of conditional receipts as provided.

Q. The only receipt you issued is plaintiffs' Exhibit 1, shown here this morning?

A. Yes.

Q. That is the only receipt you issued?

A. That is all. [55]

Mr. BOLAND: Q. Read Section 14 again.

A. Section 14 says—a sign for blank dollars—“In cash has been paid to the soliciting agent and a conditional receipt No., dated, signed

(Testimony of Fred J. Moore.)

by the Secretary of the Company and countersigned by the Agent, has been issued, making the insurance in force from such date, provided this application shall be approved.”

Mr. BOLAND: Q. The conditional receipts therein referred to contain a signature by the Secretary of the Company, do they not?

A. Yes.

Q. You did not issue one signed by the Secretary?

A. I did not.

Q. Let me ask you to read 78.

A. (Reading) “Section 78”——

Mr. NELSON: Just a moment. Are those the instructions of the company to the Agent?

Mr. BOLAND: Yes.

Mr. NELSON: Of this instruction book that you are reading? There is no claim, is there, that the insured read or knew of the contents or existence of the provisions contained in that instruction book?

Mr. BOLAND: I am not making any claim as to what the applicant knew.

Mr. NELSON: Well, unless it is connected up I say it is incompetent, irrelevant, and immaterial, and object to it on that ground.

Mr. BOLAND: The authority of the agent here is in direct issue, if your Honor please. The plaintiff has alleged he was duly authorized to do a certain act. The authority of the agent is predicated upon that allegation in the complaint. [56]

(Testimony of Fred J. Moore.)

The COURT: There are two issues there. First of all, if the agent had the authority, and, second, the question as to whether he had what is sometimes looked on as being the equivalent of authority.

Mr. NELSON: If your Honor will recall, Mr. Murray testified in the deposition they knew and the agent was accustomed to and did tell the applicant they could make that insurance effective immediately, and that they left to the agent—they left it to the agent to give whatever form of receipt was necessary to the applicant, and as Mr. Moore has testified, the applicant had done everything that he thought could be done and was necessary to be done in order to make that policy go into effect immediately, subject only to the final proof of the company, which we have shown on the application, itself.

Mr. BOLAND: In the form application, itself, Mr. Nelson, just referred to, it says: "It is agreed that no agent or other person except the president, a vice-president or a secretary of the Company has power on behalf of the company to bind the company by making any promises, respecting benefits under any policy issued hereunder or accepting any representations or information not contained in this application, or to make, or modify any contract of insurance", right in the application, itself, the applicant is especially notified he is not insured unless and until a policy of insurance is delivered to him.

The COURT: Q. You informed Mr. Winslow, did you, that he was insured?

(Testimony of Fred J. Moore.)

The WITNESS: I never informed anyone, your Honor, that they're insured. It is subject to the home office ruling. I seek only applicants I think are insurable, but sometimes my judgment is not—— [57]

The COURT: (Interrupting) Q. Did you tell him his insurance would run from any particular date?

A. I told him by paying the full premium, assuming that his medical examination was acceptable to the home office, his insurance would be in force immediately.

Q. That is, when you say "immediately" from the date he signed?

A. From the date of medical examination.

Q. In other words, if he paid the full premium at any time up to——

A. (Interrupting) Subject to his continuing to pay annual premiums there are certain rules in there if a person pays so many years it has continuing features, even if the policy should not be kept up.

The COURT: Q. You are getting away from my question. You gave him this receipt, and within what time did he have to pay the balance of \$100?

A. In sixty days.

Q. \$100 carried him for a quarter?

A. More than that.

(Testimony of Fred J. Moore.)

Q. And had they acted favorably before he died he would have been insured according to your theory, is that your idea?

A. That is my idea.

Q. He would have been insured from the date he had the medical examination had the home office issued the policy? According to my request the policy would be dated previous to the medical examination—would be dated November 20th.

Q. If it had been paid it would be in effect?

A. Yes.

Q. Then you so represented to him, didn't you?

A. Yes, I did.

Q. Have you ever followed this practice before?

A. Yes.

Q. And issued this kind of receipt?

A. Yes.

Q. How frequently did you do this as against the other kind of a receipt?

A. I do that practically in all cases. I haven't [58] had a conditional receipt book for quite some time, and the office has accepted my receipts on that order, and noted in the blank 14 the cash had been paid, that then assuming the medical examination is satisfactory would date the policy on the date of medical examination.

Q. In other words, your company has followed this type of receipt?

A. Yes.

Q. For how long a time?

(Testimony of Fred J. Moore.)

A. I have been with them actually since February, Twenty.

Q. And even though the instruction was different, in view of the fact that they have put in your hands that other type of receipt book you have gone ahead with this in attending to your business?

A. In many cases.

Q. In every case that involves a date prior to the actual issue of the policy, that a policy be dated back to that date, is that correct?

A. No.

Mr. BOLAND: That has nothing to do with this matter—the dating back.

The WITNESS: That has nothing to do with it. To make that clear, if I were writing you for insurance today and you paid me a certain sum of money, it is my belief that that receipt would cover. I am protecting my client by saying that I have accepted from him so much money, and the company receives that report in due time that I have.

The COURT: Q. You look upon it as a temporary coverage prior to action on the policy itself?

A. Subject to the company rules, yes. The fact a man pays me the full amount is no guarantee on my part I could assure him he would get a policy. That money could be returned for reasons I do not know anything about, and [59] the company would request I notify Mr. So-and-so the company declines the risk. I am not notified of the reasons.

(Testimony of Fred J. Moore.)

Q. Supposing I should give you the full amount and you should give me a receipt, and supposing I should die before the company gets your papers, you wouldn't cover me? Is that your theory?

A. I would say that if the company rules along medical lines and what they call "personal inspection" had been favorable you would have been covered.

Q. In other words, they are not in a position to deny it unless they can point out something wrong in the medical history?

A. Not only medical, but environment when the boy or person is living.

Q. Supposing you should give a misstatement in an application?

A. I wrote a young boy in a certain place. He lived with his parents. The father was reputed to be a bootlegger, before liquor was legal. The boy paid me the full premium. The medical examination was satisfactory, but our company notified me to advise this young man they declined to take the risk, without giving me any reason, and to return the money. I felt an injustice had been done, and went to the auditor of the particular company where he worked and the cashier in the bank, and asked them to write to—I wrote a letter myself. From a source I found out why the company declined him, due to his living at home where his father was a bootlegger, and they wouldn't take the risk. That would be a moral risk, or environ-

(Testimony of Fred J. Moore.)

ment. There is nothing against the boy from a medical character standpoint, but they did not want to accept a risk they thought might result in a claim due to that.

Q. Your thought is if it was the right kind of risk and the right kind of medical examination——

A. Yes. [60]

Q. You believe the company then would honor it as being in force during this period prior to the issuance of the policy?

A. I do.

Q. You do now, do you?

A. Yes.

Q. In other words, that is your understanding of the attitude and the policy of your company, as you have conducted yourself here for some years?

A. Yes.

The COURT: No further questions on the part of the Court.

Mr. BOLAND: Q. Is that true where the full premium is not paid in advance?

A. What is that?

Q. Is your statement just made to the Court your opinion what would be the custom true—does it hold true where the full premium is not paid to you in advance in cash?

A. It is subject to the full premium.

Q. It is subject to the full premium? I was going to call your attention to what you just read, "Any representative who fails to comply with this rule will be liable to immediate dismissal."

(Testimony of Fred J. Moore.)

A. I understand the rule.

The COURT: Q. How soon do they have to pay the balance?

Mr. BOLAND: Immediately.

(Mr. Boland handing book to witness).

The COURT: I am asking the witness.

Q. I want to know what he does, not what he reads out of the book.

The WITNESS: If a person paid me a certain sum and agreed to pay me the balance in 60 days my company would honor that.

The COURT: Q. They would?

A. Yes.

The COURT: That is all. No further questions on the part of the Court.

Mr. BOLAND: Nothing further. [61]

Mr. NELSON: That is all.

Mr. BOLAND: Defendant rests.

Mr. NELSON: The plaintiff rests.

The COURT: How much time do you want to present your case?

Mr. BOLAND: I would like to make a motion for a directed verdict.

The COURT: Proceed.

Mr. BOLAND: At this time, if the Court please, I move the Court to direct the jury to return a verdict for the defendant. It is your Honor's custom to present this in the presence of the jury?

The COURT: I always take the motion. If you wish to argue it the argument is not before the

(Testimony of Fred J. Moore.)

jury, but the making of the motion and the ruling on the motion is in the presence of the jury.

Mr. BOLAND: On the following grounds:

1. There is no evidence to sustain a finding or verdict that any contract of insurance or otherwise was entered into, as alleged in either the first or second count of the complaint.

2. Fred J. Moore had no power or authority to enter into any contract of insurance or otherwise on behalf of the defendant, as alleged in either the first or second count of the complaint.

3. Fred J. Moore did not purport or attempt to enter into any contract of insurance or otherwise on behalf of the defendant, as alleged in either the first or second count of the complaint.

4. The written application signed by Leonard N. Winslow was a written offer to enter into a contract of insurance according to its terms, which offer was never accepted according to its terms.

5. No contract of insurance or otherwise, as alleged in either the first or second count of the complaint, could be [62] effected until a policy was issued and delivered to Leonard N. Winslow during his continuance in good health, and no such policy was ever delivered.

6. No contract of insurance or otherwise, as alleged in either the first or second count of the complaint, could be effected unless the first premium thereon was paid in full during the good health

(Testimony of Fred J. Moore.)

of Leonard N. Winslow, and said first premium was not so paid in full.

7. There was no ratification of any act or offer or contract made, done or performed, or purported to be made, done or performed, by Fred J. Moore, by defendant, with respect to any of the matters alleged in either the first or second count of the complaint.

8. There was no estoppel of any act or offer or contract made, done or performed, or purported to be made, done or performed, by Fred J. Moore, by defendant, with respect to any of the matters alleged in either the first or second count of the complaint.

9. The delivery of a policy and the payment of the first premium conforming to the written application, was essential to any contract between said Leonard N. Winslow and defendant.

10. The death of said Leonard N. Winslow prior to the consummation of a contract by delivery of the policy and payment of the full premium, destroyed the subject matter of the negotiations for a contract.

The COURT: Before passing on that, I am willing to open up the case for this purpose, if you wish. Having placed in the record everything pertaining to what you consider the authority as far as any written instructions or otherwise given—

(Testimony of Fred J. Moore.)

Mr. BOLAND: Your Honor ruled against me?

The COURT: I am opening the case for you to place that in the form of the cross-examination of a witness. I will treat the examination of the court as being a direct examination, and you can confront him with the statement he has made, or any instructions you wish to ask him about—such questions as are proper. The witness will return to the stand and then I will pass upon the motion, treating it as a cross-examination of the witness, my questions being asked as part of the direct on the part of the plaintiff.

FRED J. MOORE,

recalled for

Cross-Examination.

Mr. BOLAND: Q. I call your attention Mr. Moore, to the portion of the rules which you have already read—77, I believe—“The Company will not recognize initial premiums paid in advance of delivery of policies unless the full premium is paid in cash, a conditional receipt is issued and the full premium is forwarded to the Agency,” and the statement that in the event it is disregarded you are liable to immediate dismissal. In view of that rule, and what I have read, do you now state that the company would consider a policy in force if only a portion of the premium were paid and conditional receipt issued?

(Testimony of Fred J. Moore.)

A. Subject to a note for the balance, it is my understanding the company would.

The COURT: In sixty days?

The WITNESS: Yes.

Mr. BOLAND: Q. Both you and the company would disregard this rule?

A. I don't know how often the company changes the rules, but there has been something in regard to notes within the last few years since I have had a contract, and it is my understanding [64] that a note would make it binding. I get that from the San Francisco office.

Q. Where have you that? In writing?

A. No, I have not. Well, I will take that back. I have something in writing on that, too, in circular form. A printed form.

Q. Something that alters where I have read to you?

A. In regard to notes. Now, there is nothing published in my red book concerning notes.

Q. Are you sure of that?

A. Well, if there is I don't know where it is.

The COURT: Q. But you have testified further that you have assurance that you will get that money inside of sixty days, as I understand.

A. Yes.

Q. That goes beyond notes. That goes to where you think is proper credit?

A. Yes.

(Testimony of Fred J. Moore.)

The COURT: We don't want this case to get off on an error or mistake here.

Mr. BOLAND: Q. Now, will you read No. 78?

A. (Reading) "When Insurance Is Effective."

Mr. NELSON: The entire rule—

The COURT: He is confronting him with what I understand are the rules of the company now.

The WITNESS: (Reading) "When Insurance Is Effective."

"The attention of Agents is particularly called to the clause in the application by which the applicant agrees that the insurance 'shall not take effect unless and until delivered to and received by the insured, the beneficiary, or by the person who herein agrees to pay the premium, during the insured's continued good health, and unless and until the first premium shall have [65] been paid during the insured's continuance in good health.' This applies to all cases except where the full premiums are paid in cash and conditional receipt issued and such premiums immediately forwarded to the Agency, and suggests an argument for urging payment of premiums with the application."

Mr. BOLAND: Q. In view of that, will you still say that your conclusion is that the—or that you had instructions that the insurance can go in force without the full payment of the premium—forwarding it to the Home Office, or Agency Office and issuing conditional receipt?

(Testimony of Fred J. Moore.)

A. I repeat my understanding is that part of cash followed with the difference in a note is acceptable to put a policy in force.

Q. Immediately and before delivery of the policy?

A. Subject to a person being accepted due to medical and inspection as the company thinks——

The COURT: Q. You say a note or credit of sixty days which you consider cash, is that correct?

A. That is correct. That is my understanding.

Q. I wish you would add that. That element has been left out. If that is your understanding we want to know.

Mr. BOLAND: Q. Is that credit equivalent to a note, or must you have a note?

A. A note——

Q. Without a note it is not good?

A. Cash or a note.

Q. Either cash or a note?

A. Yes.

Q. Didn't you get a note here?

A. No.

The COURT: Q. Didn't you say in several cases you did business where you did accept cash payable in sixty days?

Mr. BOLAND: I think your Honor was confused.

The COURT: He is testifying now. [66]

The WITNESS: I am a little confused at your question, there, your Honor.

(Testimony of Fred J. Moore.)

The COURT: Q. As I understand it, you said if there was a balance due on a premium it was paid within sixty days—that was satisfactory. Is that correct?

A. Subject to a note.

Q. But you had to have a note?

A. Yes.

Q. Your attitude in this case is you feel, not having been provided with a note, you were not obligated?

A. You are asking me a direct question. My personal opinion is the claim should be paid. If there is any irregularity in this case it does not belong on the deceased boy.

Q. In view of the statement, have you ever done this before in which you have accepted extended credit for sixty days?

A. I have taken the notes or paid the premiums myself.

Q. Have you ever done it before where you didn't take a note, but did give credit?

A. Yes, by paying the premiums, myself. I explained in testimony this morning how I wrote this application.

Q. Let me ask you then: How was it you did not pay it in this case, yourself?

A. Our closing date is the 25th day of the month. The application was written on the 14th, and it was my intention to have done that very thing—pay it on the 25th. That is what I would have done.

(Testimony of Fred J. Moore.)

Q. You were going to pay the balance of that premium to the company within the sixty days, you, yourself, personally—is that correct?

A. Yes.

Q. And, therefore, you were relying upon him to reimburse you for that difference?

A. Yes, sir.

Q. And consequently you felt the premium was paid, is that correct?

A. No, I would not say it was paid, because it [67] wouldn't be paid to the company.

Q. It came under your regular, ordinary business relationship, is that correct? In other words, that was in the course of business?

A. Yes.

Mr. BOLAND: Q. Mr. Moore, I can see where the confusion has arisen. You have extended a 60 day credit, yourself, or you are allowed a 60 day credit for paying the Agency office where the premium is not paid in full in advance, but you have the policy for——

A. Yes.

Q. You have a 60 day credit?

A. Yes.

Q. But you are supposed in that event to take a note and register it at the Agency Office?

A. Yes.

Where it is intended for the policy to go into effect the day that the applicant takes the medical examination, you either have to send the full pre-

(Testimony of Fred J. Moore.)

mium in cash to the Agency Office or part cash and a note for the balance. That was your testimony, was it not?

A. Yes.

Q. And that is correct?

A. Yes.

Q. So that in order to make the policy go into effect the day that the applicant takes the medical examination, the full premium must reach the Agency Office in San Francisco either in cash or cash and a note, that is correct?

A. Yes.

Q. You did not receive a note in this case?

A. No.

Q. And you sent only the \$100—Was all that was ever sent?

A. Yes.

Mr. BOLAND: That is all.

Redirect Examination.

Mr. NELSON: Q. Did you have an arrangement or custom with the company whereby you say you intended, yourself, not later than the [68] 25th of each month, to advance whatever difference was necessary to make this particular policy effective?

A. Yes.

Q. And you had intended to forward the difference there—whatever would be necessary, between the amount due on the premium and the amount

(Testimony of Fred J. Moore.)

paid to the company, so as to make this policy effective immediately?

A. Yes.

Q. I understand you to say in answer to his Honor's question that the practice had been followed or approved by the company in other cases?

A. Yes.

Q. Isn't it also true in this particular instance that the insured, that is, Lorenzo Winslow, offered to pay the amount that would be necessary to make the policy effective immediately on the quarterly basis, and that would have amounted to some \$67?

A. Yes.

Q. And that you told him he could make a saving by paying it on an annual basis, of about 6 per cent.?

A. Yes.

Testimony of

MR. MURRAY

by deposition.

Mr. BOLAND: I now would like to read the balance of the deposition of Mr. Murray, which deals with this matter.

The COURT: You may proceed, then.

Mr. NELSON: Subject to an objection on our part as incompetent, irrelevant, and immaterial.

Mr. BOLAND: We have already read the portion of the deposition dealing with 78.

The COURT: Proceed.

(Mr. Boland reading from page 32, line 22, of deposition as follows):

(Deposition of Mr. Murray.)

“130. Not to be delivered. A policy must not be delivered, nor the initial premium accepted, unless the applicant is in good [69] health and his occupation as stated in application remains unchanged. This rule applies regardless of the fact that the premium may have been previously collected. In any case of change in the applicant’s health or occupation, the policy must be returned at once to the manager with a statement of facts, that he may ascertain from the company whether the policy should or should not be delivered, and if to be delivered, upon what conditions.”

(Continuing reading to page 34, line 4 as follows) :

“Now, we have here, Mr. Murray, a book of conditional receipts, and I will tear one out and show it to you. That is the form which is referred to in the rules which have just been read?

A. Yes, sir.”

Mr. BOLAND: If the Court please, we offered that in the original deposition, but I understand that is not here.

The COURT: I can’t supply anything.

Mr. BOLAND: I understand.

Q. Are you sure, Mr. Moore, that you have none of those receipts with you?

A. No.

Q. Or available here?

A. No, I have not.

(Continuing reading of deposition, starting with line 5, page 34) :

(Deposition of Mr. Murray.)

“Q. And that is the form which you referred to in your testimony concerning what Mr. Moore could or should have done if the full premium had been paid in advance?

A. Yes, sir.”

(Continuing reading to page 36, line 9):

“Q. Now, I show you, Mr. Murray, a book entitled ‘Rules, Regulations and Instructions for Agency Managers and Cashiers.’ What is that book?” [70]

Mr. NELSON: We object to that on the ground it is incompetent, irrelevant, and immaterial. There is no question here about any agency manager or cashier, and what the company’s instructions may have been to Mr. Murray and the San Francisco office, unless it can be shown that the applicant Winslow was referred to by Mr. Murray in this transaction it necessarily would be hearsay and incompetent, irrelevant, and immaterial. I don’t think it is claimed Winslow ever saw Murray *ever saw Murray* or ever knew of his existence, or ever knew any agency manager or cashier in San Francisco. Therefore, the instructions of the company to that cashier certainly can be of no help in the determination of the issues of this case.

Mr. BOLAND: They are all rules and regulations, if your Honor please, designed to protect this company, operating as it does in 48 States, having over two million policies outstanding. They do their best to put in rules and regulations so that no agent

(Deposition of Mr. Murray.)

can do the things some of them try to do, and naturally it is perfectly proper to put before the Court and Jury.

The COURT: Read the question, Mr. Reporter.
(Question read.)

The COURT: Is that the book brought to the attention of Mr. Moore later?

Mr. BOLAND: It follows right back as to what Murray can do with respect to money Moore sends to him. If Mr. Moore does not do a certain thing in accordance with these rules Murray would have shot it right back to him.

The COURT: I will allow it.

Mr. NELSON: We note our exception to the ruling of the Court.

(Continuing reading of deposition on page 36, line 9, as follows): [71]

“A. That is the book, as indicated from its title, which is given to the cashiers and the manager to guide them in conducting the company’s business.”

Mr. BOLAND: That is exactly what it is.

Mr. BOLAND: (Reading) “Initial premiums are payable in cash.”

Mr. BOLAND: Page 36, line 12 (Reading)
“This book that you refer to is the one which is produced here?”

A. Yes, sir.

“Q. That is one which contains instructions for your guidance and your authority?”

A. Yes, sir.”

(Deposition of Mr. Murray.)

“Mr. BOLAND: Senator, I will read from Section 5, headed ‘Premiums,’ Rule No. 8”, and reading to page 37, line 19, as follows:

“Q. This book you refer to contains all of your authority, does it not, Mr. Murray?”

A. Yes, sir.”

(Mr. Boland continuing reading of deposition, page 37, line 24, as follows):

“Q. I understood you to say, in answer to one of Senator Nelson’s questions, that the San Francisco Agency Office has no authority to accept applications other than to forward them as received to the home office for action there, is that right?”

“A. Yes.

“Q. It has no authority to accept and issue a policy upon any application?”

A. No.”

Defendant rests.

Thereupon the defendant renewed the Motion for a Directed Verdict in favor of said defendant.

Thereupon attorney for plaintiff moved the Court to instruct the Jury to return a verdict in favor of the plaintiff in the sum of \$10,000.00, with interest from date of death of Leonard [72] Winslow, that is, from December 20, 1934, with seven per cent interest.

Thereupon the Court granted the Motion for a Directed Verdict in favor of the defendant and gave an exception to counsel for plaintiff.

The Court thereupon instructed the Jury to retire, elect a Foreman and proceed with its deliberations and return a verdict in favor of the defendant.

Thereupon the Jury retired and returned to the Court Room with a verdict in favor of the defendant.

JUROR NO. 6. I would like to tell his Honor it is not a verdict of the Jury. An instructed verdict.

The COURT: It is your verdict under the instructions of the Court.

Mr. NELSON: We reserve an exception to the instruction and the verdict.

Judgment upon said verdict was thereupon entered in favor of defendant and against plaintiffs. Thereafter, and from time to time, upon stipulation of counsel and order of the Court, the term of the court was extended to February 1, 1937, for all purposes connected with the case, and the time for settlement of this Bill of Exceptions was likewise extended to February 1, 1937.

H. C. NELSON

Attorney for Plaintiffs and
Appellants.

STIPULATION.

It is hereby stipulated by and between the parties hereto and their respective counsel, that the foregoing Bill [73] of Exceptions contains all the

evidence received by the Court or offered by the respective parties, objections thereto and rulings thereon and exceptions allowed; that the term of court for all purposes of the case was, upon stipulation and order, extended to February 1, 1937, and that the time for the settlement of this Bill of Exceptions was likewise extended to February 1, 1937.

H. C. NELSON

Attorney for Plaintiffs and
Appellants.

F. ELDRED BOLAND

KNIGHT, BOLAND &
RIORDAN

Attorneys for Defendant and
Appellee.

CERTIFICATE.

I, HAROLD LOUDERBACK, Judge of the United States District Court, for the Northern District of California, Northern Division, hereby certify that the foregoing Bill of Exceptions was presented and is hereby settled within the term of the court as extended and within the time allowed by law, stipulation of the parties and the orders of the court. I further certify that I have examined the same and find it true and correct in all particulars; that said Bill of Exceptions contains all of the evidence offered by the parties, admitted by the court, objections thereto, rulings thereon and exceptions allowed, and that the same is hereby settled and

Mutual Life Ins. Co. of N

allowed as a true and correct Bill of
the above-entitled action.

HAROLD LOUD

Judge of the
District Court

PLAINTIFFS' EXHIBIT

253.50

Eureka, Cal

RECEIVED from Leonard N. V

One Hundred Dollars

To apply on 5000.00 20 yr En
policy applied for in The Mutual
New York this date.

\$100.00

FRED J.



THIS APPLICATION IS MADE BY THE INSURED PERSON TO THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK... All the following statements and answers are fully and correctly recorded by the Medical Examiner.

Name in full of Insured: Edward Nathan Winslow For II. O. Use **DEC 6614**
 Given Name, Middle Name (if good) and Surname (Print Family)
 Business Address of Insured: 26 California Ave, Berkeley, Cal. City of Berkeley State of Calif. Citizen of U.S.A.
 Street and No. 915 W. 15th St. Town, City or Village Berkeley or miles in a direction
 Date of Birth 21 day of May 1911
 Age of Insured nearest birthday 24 Sex Male
 Present occupation Electrical Engineer Date of last communications Insured 915 W St Berkeley Calif
 Former occupations None Nature of occupation of Insured None P. O. Address Berkeley Calif

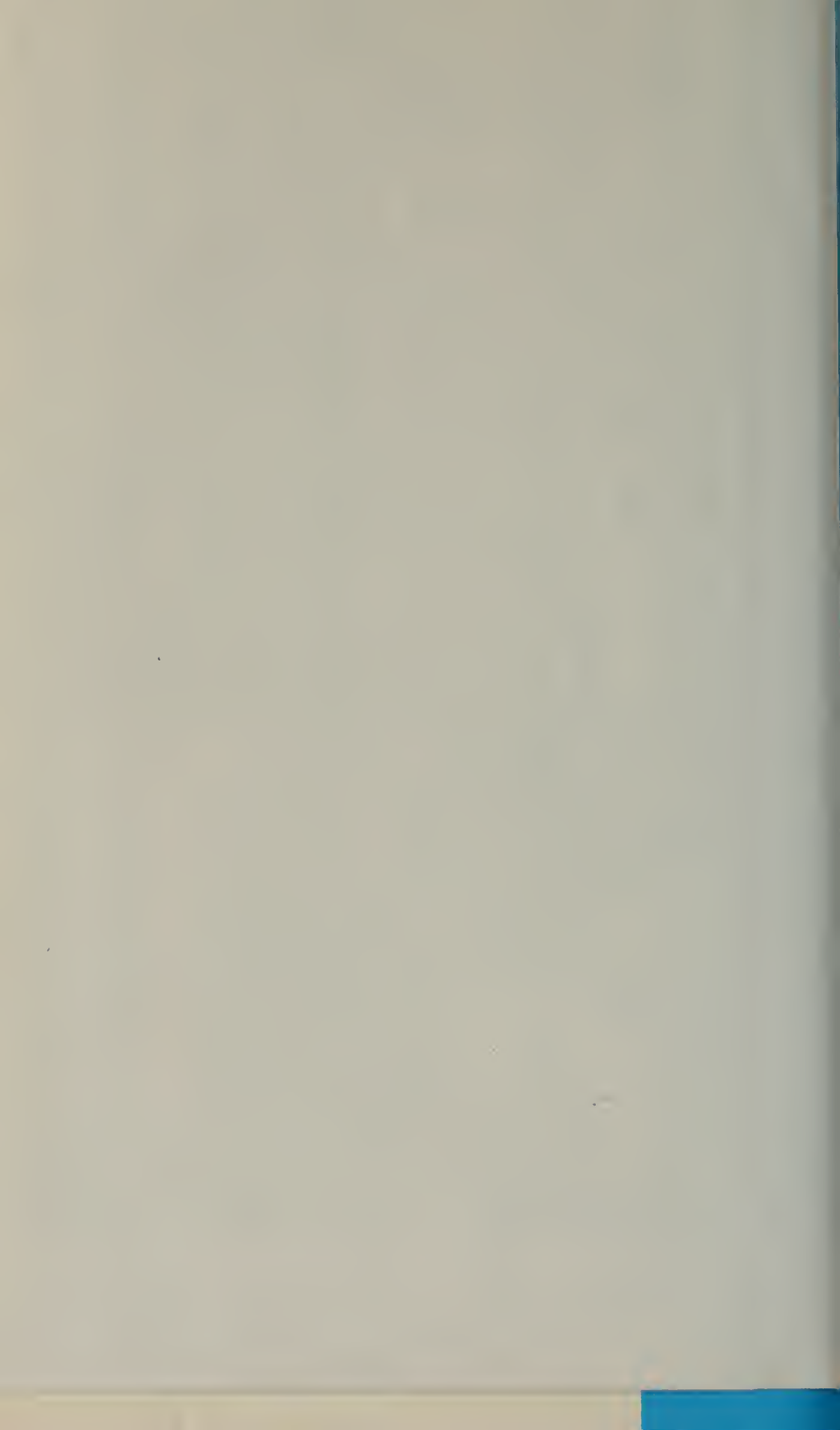
1. The Insured does not contemplate either (a) going to a foreign or tropical country, or (b) changing his occupation.
 2. The Insured has not made, nor does he contemplate making aviation flights, or aeronautical ascents, (if any exceptions furnish regular aviation form).
 3. No negotiations for other insurance on the life of the Insured, nor any application for reinstatement of insurance on the life of the Insured, are now pending or contemplated.
 4. No application or examination for life insurance on the life of the Insured has ever been declined or postponed by any company or association, nor has any company offered a policy differing in plan, amount or premium from that applied for.
 5. (To be answered if Waiver of Premium applied for.) The total amount of disability income is \$ None annually.
 6. (a) Amount \$ 5000 (b) Premiums None annually.
 7. Plan 20 year endowment (State (City) Calif)
 8. It is agreed that if the Company is unwilling to issue a policy for plan and amount applied for, this application shall be for such plan and amount as may be issued by the Company.
 9. (a) Beneficiary predeceases Insured policy will be payable to Insured's estate unless otherwise specified or to Beneficiary of Walter of Figure.
 (b) Name (in full) of Beneficiary Walter Winslow Age and Residence None
 (c) Address None
 (d) None
 (e) Relationship to the Insured or Insurable Interest None
 10. All benefits, options, rights, and privileges conferred by the policy or policies of this Company, including the right to change Beneficiary are reserved to Insured except right to Waiver of Premium (insert insured or Beneficiary).
 11. Yes (insert Yes or NO, if you give details) a cash has been paid to the Soliciting Agent and a conditional receipt No. None dated None signed by the Secretary of the Company, and countersigned by the agent has been issued insuring the insurance in force from such date, provided this application shall be approved. Yes

It is agreed that to the event of the self-destruction of the Insured whether sane or insane during the first year following the date of issue of the policy hereby applied for the Company's liability shall be limited to the amount of the premiums paid. It is agreed that no Agent or other person except the President, a Vice-President, or a Secretary of the Company has power on behalf of the Company to bind the Company by making any promises respecting benefits under any policy issued hereunder or accepting any representation or information not contained in this application, or to make, or modify any contract of insurance, or to extend the time for payment of a premium, or to waive any forfeiture or other of the Company's rights or requirements.
 This application is made at the instance and request of the undersigned, who, it is agreed, will pay all premiums out of his, her or its funds, and who ratifies the representations, statements, answers and agreements contained in such application and in the statements to Medical Examiner.
 Signature in full of the person or persons who will pay the premium: Edward Nathan Winslow
 (If a corporation or other business insured no similar signature, WITH TITLE)
 (When there is more than one person to be insured and who will pay the premium, the names of all such persons and their relationship to the insured and who will pay the premium, should be stated.)
 Signature of Insured: Edward Nathan Winslow Dated this 12th day of Dec 1924
 Signature of Parent or Guardian: None
 I have known the Insured for 20 years and saw him sign this application. So far as known to me any insurance taken under this application will not replace whole or part insurance in this or any other company.
 Signature of Agent: None Collecting Agent.

STATEMENTS OF THE INSURED TO MEDICAL EXAMINER **9529**

19. What illnesses, diseases, injuries and surgical operations have you had since childhood?
 Name of disease, etc. Number of Attacks Date of each Duration Complications Any remaining effects Date of Complete Recovery
None
 20. State every physician or practitioner whom you have consulted, or who has prescribed for or treated you in the past five years for any ailment, serious or not serious.
 Name of physician or practitioner Address When consulted Nature of Complaint. Give full details above under Q. 19.
None
 21. Have you stated in answer to question 19 all illnesses, diseases, injuries and surgical operations which you have had since childhood? (Ans. Yes or No.) Yes
 22. Have you stated in answer to question 50 every physician and practitioner consulted during the past five years and dates of consultations? (Ans. Yes or No.) Yes
 23. (a) Are you in good health? Yes
 (b) If not, what is the impairment? None
 24. (a) How much weight have you gained in the past year? None
 (b) How much weight have you lost in the past year? None
 (c) If any change, state cause. None
 (d) How long has weight remained constant? None
 25. Is there any impairment of vision in the (a) right eye? None (b) left eye? None
 (c) If so, state the cause and the degree of impairment in each eye. None
 26. Are you single or married? Single
 27. (a) To what extent have you used wine, spirits or malt liquors during the past year? (State amount, kind and how much in any one day at the most.) None
 (b) Do you use any of them daily? (If so, state kind and amount.) None
 (c) Have you been intoxicated during the past five years? (State how often, how recently and duration.) None
 (d) If a total abstainer, how long have you been so? None
 (e) Have you ever taken care for alcoholic or drug habit? (If so, give date or dates.) None
 28. Have you ever been at a hospital, sanitarium, asylum or cure for treatment, observation or diagnosis? (If so, details) None
 29. Have you restricted your diet in any way within one year? (If so, details) None
 30. Have you ever raised or spat blood? No
 31. Have you a rupture or hernia? No
 32. Have you any bodily deformity? No
 33. Have you lost any part of arm or leg? No
 34. Have you any impairment of hearing? No
 35. Have you ever been told that your urine contained albumin, sugar, casts, pus or blood? No
 36. Have you ever changed your residence on account of your health? No
 37. Do you contemplate making any change in your residence? (If so, why?) No
 38. Has any member of your household suffered from tuberculosis within the past two years? (If so, date when last exposed) No
 39. Has there ever been any suspicion that any of your parents, brothers or sisters ever had tuberculosis or insanity? No
 40. Family record if living
 Father 58 good If dead None Cause of death None How long ill None Age of grandparents None
 Mother 52 good If dead None Cause of death None How long ill None Age of grandparents None
 Brothers Number living one 7 good If dead None Cause of death None How long ill None Age of grandparents None
 Sisters Number living 0 If dead None Cause of death None How long ill None Age of grandparents None

Listed at Berkeley, Cal. State or Province of Calif.
 the 12 day of Dec 1924
 WITNESSES: None M. D. None
 I certify that each and all of the foregoing statements and answers were read by me and are fully and correctly recorded by the Medical Examiner.
 Signature in full of the Insured: Edward Nathan Winslow



MEDICAL EXAMINER'S REPORT.

REMARKS:

42. (a) How long and how intensely have you known the Insured?
one year
 (b) Give some mark of identification.
none

43. General appearance? (Healthy or unhealthy).
Healthy

44. Apparent age?
21 years.

45. Race? (as white, etc.)
White

46. Weight? (ordinary clothes)
222 lbs.

47. Did you personally weigh Insured on scales?
Yes
 (State weight required if over or under weight.)

48. Height by measurement?
6 feet 2 1/2 inches.

49. Measurement of chest at full inspiration?
41 inches.

49. Measurement of chest at deep expiration?
36 inches.

50. Measurement of abdomen at level of umbilicus?
36 inches.

51. State pulse rate? (Count a full minute, if over 10 or under 70 relate.)
70

52. Is the pulse regular?
Yes
 (If not, state type of irregularity and give full description.)

53. Blood pressure: (Manometric Method)
 (a) Systolic? *130* mm. Hg.
 (b) Diastolic? *82* mm. Hg.
 (c) Mean diastolic? *82* mm. Hg.
 (State all approximations in words.)

54. If the Insured is ruptured, examine the hernia and state:
 (a) Location and size?
none
 (b) Is it easily reducible?
none
 (c) Is a suitable truss worn?
none

55. Urinary analysis of specimen voided at this examination.
 (a) Clear or turbid?
Clear
 (If turbid, cause.) *1220*
 (b) Gravity?
 (If under 1000 examine another specimen.) *1020*
 (c) Reaction?
Acid
 (d) Presence of albumin?
no
 (e) Presence of sugar?
no
 (f) Do you know that the Insured passed this urine?
Yes
 (If albumin or sugar found, send part of specimen to Refer to Agency Office.)

56. Thoroughly inquire, thorough physical examination and/or any evidence of past or present disease or functional disturbance of:
 (a) Brain or nervous system? *no*
 (b) Heart? *no*
 (c) Arteries? *no*
 (d) Respiratory organs? *no*
 (e) Kidneys or other urinary apparatus? *no*
 (f) Digestive organs? *no*
 (g) Liver, gall bladder or other abdominal viscera? *no*
 (h) Rheumatic or gouty nature?
no
 (i) Syphilitic origin?
no
 (j) Either eye?
 (If Myopic, list severity) *no*
 (k) Septic nature in the nose or mouth?
no
 (l) Middle ear?
 (Any discharge) *no*
 (m) Thyroid, skin or any part of body? *no*

57. Was examination of heart and lungs made on other than bare skin? (If so, explain.) *no*

58. Was any third person present, contrary to Company's rules, while you were asking the Insured questions? *no*

59. Do you know, or suspect, that the Insured ever has, or now uses alcoholic beverages to excess, or any narcotic?
no

60. After reviewing the answers recorded in the Statements to Medical Examiner and in the Medical Examiner's Report, are you satisfied that every question has been answered fully?
Yes

61. Do you know of anything in connection with the Insured's physical condition, family history or past health record not already recorded, which would affect his (her) insurability? (If so, give details under "Remarks") *no*

56	no
57	no
58	no
59	no
60	Yes
61	no

TO BE ANSWERED WHEN THE INSURED IS A WOMAN. Careful inquiry should be made of the Insured before answering these questions.

62. (a) Has she had any menstrual disorder, or symptoms of uterine or ovarian disease, or any disease of the breast?
 (b) Has she borne any children; if so, how many and date of last confinement?
 (c) Has she ever had any serious troubles in labor?
 (d) Has she ever had any abortion or miscarriage?
 (e) Date of marriage?
 (f) Has she passed the climacteric?

If so, give date and cause of each?
 (f) Is she now pregnant? (If so, what month?)

I certify that I have made this examination of Edward Nathan Mylor
 at Guilford Cal on this 14 day of Dec, 1934 at H. A. M.
 and that the foregoing questions have been put, and the answers of the Insured recorded as stated.

E. Office
 Medical Examiner. M. D.

Important notice to Medical Examiner.

This Report is the property of the Company and must be delivered or mailed promptly to the Examiner to the Agency manager AS INDICATED BELOW. It must not be withdrawn or destroyed by the Insured. If the Insured or his agent, or the Examiner must review it with care and see that every question is fully answered.

FAVOR	KIND	PAYT	OUR	AGE	NUMBER	DATE	AMOUNT	PREMIUM	HOW PAID
	End 20	1954	23		1/10	Nov 20 1934	5000	244 45 4 05 500	Male
						DEC 21 1934		253 50	

A. R. A. B. C. to L.
 Change Memo.

Backer	
1st Check	
2nd Check	
Pol. Writer	
Policy Form Rec.	
Pol. Checker	
Gen. Check.	
Photo. Attach.	
Cards Written	
Cards Check.	

**W. L. HATHAWAY, MANAGER,
 ONE ELEVEN SUITE,
 SAN FRANCISCO, CAL.**

**The Mutual Life Insurance Company
 of New York**

33-400A (Form 3250, Issued March '32)

For Medical Dept.
 by

For Supervisor of Risk

Without Special Benefits

With W. of P. and D. L.

With D. I. only

With W. of P. only

W. of P. and D. L. approved as Applied for

[Title of Court and Cause.]

STIPULATION EXTENDING TIME TO FILE
BILL OF EXCEPTIONS, EXTENDING
TERM OF COURT AND WAIVING ISSUE
AND SERVICE OF CITATION AND
ORDER ENTERED THEREON.

IT IS HEREBY STIPULATED and agreed between the parties hereto, (1) that plaintiffs above named may have to and including December 1, 1936, within which to prepare, serve and file herein their bill of exceptions; (2) that the term of court within which such bill of exceptions may be prepared and settled be extended to said December 1, 1936; and (3) it further appearing that said plaintiffs have been allowed an appeal herein, it is further stipulated and agreed that defendant and respondent, The Mutual Life Insurance Company of New York, a corporation, hereby waives the issuance of, and service of, a citation on appeal.

Dated, San Francisco, California, October 14, 1936.

H. C. NELSON

Attorney for Plaintiffs.

F. ELDRED BOLAND

Attorney for Defendant. [76]

Pursuant to the foregoing stipulation, it is

Ordered that plaintiffs have to and including December 1, 1936, within which to prepare, serve and file herein their bill of exceptions, and that the term of court within which such bill of exceptions may

be prepared and settled be and it is hereby extended to said December 1, 1936.

Dated: October 14th, 1936.

HAROLD LOUDERBACK

Judge of the United States
District Court.

[Endorsed]: Filed Oct. 15, 1936. [77]

[Title of Court and Cause.]

STIPULATION EXTENDING TIME TO FILE
BILL OF EXCEPTIONS AND EXTENDING
TERM OF COURT.

It is hereby stipulated and agreed between the parties hereto, (1) that plaintiffs above-named may have to and including February 1, 1937, within which to prepare, serve and file herein their bill of exceptions, and (2) that the term of court within which such bill of exceptions may be prepared and settled be extended to said February 1, 1937.

Dated, San Francisco, California, November 19, 1936.

H. C. NELSON

Attorney for Plaintiffs.

F. ELDRED BOLAND

Attorney for Defendant. [78]

Pursuant to the foregoing stipulation, it is ORDERED that plaintiffs have to and including February 1, 1937, within which to prepare, serve

and file herein there bill of exceptions, and that the term of court within which such bill of exceptions may be prepared and settled be and it is hereby extended to said February 1, 1937.

Dated, November 21st, 1936.

HAROLD LOUDERBACK

Judge of the United States
District Court.

[Endorsed]: Filed Nov. 21, 1936. [79]

[Title of Court and Cause.]

PRAECIPE FOR TRANSCRIPT OF RECORD.

To the Clerk of the United States District Court
for the Northern District of California, Northern
Division:

You are requested to prepare transcript of the record in the above entitled cause to be filed in the Office of the Clerk of the United States Circuit Court of Appeals, for the Ninth Circuit, pursuant to an appeal allowed in the above entitled cause, and to include in the said Transcript the following pleadings, proceedings and papers on file, to-wit:

1. Order for Removal from State Court to Federal Court.
2. Notice of removal of cause and filing of record in the United States District Court.
3. Amended Complaint.

4. Answer of Defendant.
5. Stipulation, re: Answer.
6. Verdict of Jury.
7. Judgment on Verdict. [80]
9. Bill of Exceptions.
10. Assignment of Errors.
11. Petition for Appeal and Order allowing Appeal.
12. Stipulation waiving issuance and serving Citation on Appeal.

Said Transcript to be prepared as required by law and the rules of the United States Circuit Court of Appeals for the Ninth Circuit.

Dated: January 5th, 1937.

H. C. NELSON

Attorney for Plaintiffs and
Appellants.

Receipt of copy of the foregoing Praecipe for Transcript of Record is admitted this 5 day of January, 1937.

F. ELDRED BOLAND
KNIGHT, BOLAND &
RIORDAN

Attorneys for Defendant
and Appellee.

[Endorsed]: Filed Jan. 8, 1937. [81]

CERTIFICATE OF CLERK U. S. DISTRICT
COURT TO TRANSCRIPT ON APPEAL.

I, Walter B. Maling, Clerk of the United States District Court for the Northern District of California, do hereby certify that the foregoing 81 pages, numbered from 1 to 81, inclusive, contain a full, true and correct transcript of certain records and proceedings in the case of Annie E. Winslow, et al, vs. The Mutual Life Insurance Company of New York, Law No. 1330-S, as the same now remain on file and of record in this office; said transcript having been prepared pursuant to and in accordance with the praecipe for transcript on appeal, copy of which is embodied herein.

I further certify that the cost of preparing and certifying the foregoing transcript on appeal is the sum of Twelve and 05/100 (\$12.05), and that the same has been paid to me by the attorneys for the appellant herein.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court, this 1st day of February, A. D. 1937.

[Seal]

WALTER B. MALING,

Clerk,

By F. M. LAMPERT,

Deputy Clerk.

[Endorsed]: No. 8450. United States Circuit Court of Appeals for the Ninth Circuit. Annie E. Winslow, and Annie E. Winslow, as Administratrix of the Estate of Lorenzo N. Winslow, Deceased, Appellants, vs. The Mutual Life Insurance Company of New York, a corporation, Appellee. Transcript of Record Upon Appeal from the District Court of the United States for the Northern District of California, Northern Division.

Filed February 2, 1937.

PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.